

## **Title 73. Water and Irrigation**

### **Chapter 1 General Provisions**

#### **73-1-1 Waters declared property of public.**

- (1) All waters in this state, whether above or under the ground, are hereby declared to be the property of the public, subject to all existing rights to the use thereof.
- (2) The declaration of public ownership of water in Subsection (1) does not create or recognize an easement for public recreational use on private property.
- (3) The Legislature shall govern the use of public water for beneficial purposes, as limited by constitutional protections for private property.
- (4) The right of the public to use public water for recreational purposes is governed by Chapter 29, Public Waters Access Act.

Amended by Chapter 410, 2010 General Session

#### **73-1-2 Unit of measurement -- Of flow -- Of volume.**

The standard unit of measurement of the flow of water shall be the discharge of one cubic foot per second of time, which shall be known as a second-foot; and the standard unit of measurement of the volume of water shall be the acre-foot, being the amount of water upon an acre covered one foot deep, equivalent to 43,560 cubic feet.

No Change Since 1953

#### **73-1-3 Beneficial use basis of right to use.**

Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.

No Change Since 1953

#### **73-1-4 Reversion to the public by abandonment or forfeiture for nonuse within seven years -- Nonuse application.**

- (1) As used in this section:
  - (a) "Public entity" means:
    - (i) the United States;
    - (ii) an agency of the United States;
    - (iii) the state;
    - (iv) a state agency;
    - (v) a political subdivision of the state; or
    - (vi) an agency of a political subdivision of the state.
  - (b) "Public water supplier" means an entity that:
    - (i) supplies water, directly or indirectly, to the public for municipal, domestic, or industrial use; and
    - (ii) is:
      - (A) a public entity;

- (B) a water corporation, as defined in Section 54-2-1, that is regulated by the Public Service Commission;
- (C) a community water system:
  - (I) that:
    - (Aa) supplies water to at least 100 service connections used by year-round residents; or
    - (Bb) regularly serves at least 200 year-round residents; and
  - (II) whose voting members:
    - (Aa) own a share in the community water system;
    - (Bb) receive water from the community water system in proportion to the member's share in the community water system; and
    - (Cc) pay the rate set by the community water system based on the water the member receives; or
- (D) a water users association:
  - (I) in which one or more public entities own at least 70% of the outstanding shares; and
  - (II) that is a local sponsor of a water project constructed by the United States Bureau of Reclamation.
- (c) "Shareholder" is as defined in Section 73-3-3.5.
- (d) "Water company" is as defined in Section 73-3-3.5.
- (e) "Water supply entity" means an entity that supplies water as a utility service or for irrigation purposes and is also:
  - (i) a municipality, water conservancy district, metropolitan water district, irrigation district, or other public agency;
  - (ii) a water company regulated by the Public Service Commission; or
  - (iii) any other owner of a community water system.
- (2)
  - (a) Except as provided in Subsection (2)(b) or (e), when an appropriator or the appropriator's successor in interest abandons or ceases to use all or a portion of a water right for a period of seven years, the water right or the unused portion of that water right is subject to forfeiture in accordance with Subsection (2)(c).
  - (b)
    - (i) An appropriator or the appropriator's successor in interest may file an application for nonuse with the state engineer.
    - (ii) If a person described in Subsection (2)(b)(i) files and receives approval on a nonuse application, nonuse of the water right subject to the application is not counted toward a seven-year period described in Subsection (2)(a) during the period of time beginning on the day on which the person files the application and ending on the day on which the application expires without being renewed.
    - (iii) If a person described in Subsection (2)(b)(i) files and receives approval on successive, overlapping nonuse applications, nonuse of the water right subject to the applications is not counted toward a seven-year period described in Subsection (2)(a) during the period of time beginning on the day on which the person files the first application and ending on the day on which the last application expires without being renewed.
    - (iv) Approval of a nonuse application does not protect a water right that is already subject to forfeiture under Subsection (2)(a) for full or partial nonuse of the water right.
    - (v) A nonuse application may be filed on all or a portion of the water right, including water rights held by a water company.
    - (vi) After giving written notice to the water company, a shareholder may file a nonuse application with the state engineer on the water represented by the stock.

- (c)
  - (i) Except as provided in Subsection (2)(c)(ii), a water right or a portion of the water right may not be forfeited unless a judicial action to declare the right forfeited is commenced within 15 years from the end of the latest period of nonuse of at least seven years.
  - (ii)
    - (A) The state engineer, in a proposed determination of rights prepared in accordance with Section 73-4-11, may not assert that a water right was forfeited unless a period of nonuse of seven years ends or occurs during the 15 years immediately preceding the day on which the state engineer files the proposed determination of rights with the court.
    - (B) After the day on which a proposed determination of rights is filed with the court a person may not assert that a water right subject to that determination was forfeited during the 15-year period described in Subsection (2)(c)(ii)(A), unless the state engineer asserts forfeiture in the proposed determination, or a person makes, in accordance with Section 73-4-11, an objection to the proposed determination that asserts forfeiture.
  - (iii) A water right, found to be valid in a decree entered in an action for general determination of rights under Chapter 4, Determination of Water Rights, is subject to a claim of forfeiture based on a seven-year period of nonuse that begins after the day on which the state engineer filed the related proposed determination of rights with the court, unless the decree provides otherwise.
  - (iv) If in a judicial action a court declares a water right forfeited, on the date on which the water right is forfeited:
    - (A) the right to use the water reverts to the public; and
    - (B) the water made available by the forfeiture:
      - (I) first, satisfies other water rights in the hydrologic system in order of priority date; and
      - (II) second, may be appropriated as provided in this title.
  - (d) This section applies whether the unused or abandoned water or a portion of the water is:
    - (i) permitted to run to waste; or
    - (ii) used by others without right with the knowledge of the water right holder.
  - (e) This section does not apply to:
    - (i) the use of water according to a lease or other agreement with the appropriator or the appropriator's successor in interest;
    - (ii) a water right if its place of use is contracted under an approved state agreement or federal conservation following program;
    - (iii) those periods of time when a surface water or groundwater source fails to yield sufficient water to satisfy the water right;
    - (iv) a water right when water is unavailable because of the water right's priority date;
    - (v) a water right to store water in a surface reservoir or an aquifer, in accordance with Title 73, Chapter 3b, Groundwater Recharge and Recovery Act, if:
      - (A) the water is stored for present or future use; or
      - (B) storage is limited by a safety, regulatory, or engineering restraint that the appropriator or the appropriator's successor in interest cannot reasonably correct;
    - (vi) a water right if a water user has beneficially used substantially all of the water right within a seven-year period, provided that this exemption does not apply to the adjudication of a water right in a general determination of water rights under Chapter 4, Determination of Water Rights;
    - (vii) except as provided by Subsection (2)(g), a water right:
      - (A)
        - (I) owned by a public water supplier;

- (II) represented by a public water supplier's ownership interest in a water company; or
  - (III) to which a public water supplier owns the right of use; and
  - (B) conserved or held for the reasonable future water requirement of the public, which is determined according to Subsection (2)(f);
  - (viii) a supplemental water right during a period of time when another water right available to the appropriator or the appropriator's successor in interest provides sufficient water so as to not require use of the supplemental water right; or
  - (ix) a water right subject to an approved change application where the applicant is diligently pursuing certification.
- (f)
- (i) The reasonable future water requirement of the public is the amount of water needed in the next 40 years by the persons within the public water supplier's projected service area based on projected population growth or other water use demand.
  - (ii) For purposes of Subsection (2)(f)(i), a community water system's projected service area:
    - (A) is the area served by the community water system's distribution facilities; and
    - (B) expands as the community water system expands the distribution facilities in accordance with Title 19, Chapter 4, Safe Drinking Water Act.
  - (g) For a water right acquired by a public water supplier on or after May 5, 2008, Subsection (2)(e)(vii) applies if:
    - (i) the public water supplier submits a change application under Section 73-3-3; and
    - (ii) the state engineer approves the change application.
- (3)
- (a) The state engineer shall furnish a nonuse application form requiring the following information:
    - (i) the name and address of the applicant;
    - (ii) a description of the water right or a portion of the water right, including the point of diversion, place of use, and priority;
    - (iii) the quantity of water;
    - (iv) the period of use;
    - (v) the extension of time applied for;
    - (vi) a statement of the reason for the nonuse of the water; and
    - (vii) any other information that the state engineer requires.
  - (b)
    - (i) Upon receipt of the application, the state engineer shall publish a notice of the application once a week for two successive weeks:
      - (A) in a newspaper of general circulation in the county in which the source of the water supply is located and where the water is to be used; and
      - (B) as required in Section 45-1-101.
    - (ii) The notice shall:
      - (A) state that an application has been made; and
      - (B) specify where the interested party may obtain additional information relating to the application.
  - (c) Any interested person may file a written protest with the state engineer against the granting of the application:
    - (i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
    - (ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.
  - (d) In any proceedings to determine whether the nonuse application should be approved or rejected, the state engineer shall follow the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.

- (e) After further investigation, the state engineer may approve or reject the application.
- (4)
- (a) The state engineer shall grant a nonuse application on all or a portion of a water right for a period of time not exceeding seven years if the applicant shows a reasonable cause for nonuse.
  - (b) A reasonable cause for nonuse includes:
    - (i) a demonstrable financial hardship or economic depression;
    - (ii) the initiation of water conservation or efficiency practices, or the operation of a groundwater recharge recovery program approved by the state engineer;
    - (iii) operation of legal proceedings;
    - (iv) the holding of a water right or stock in a mutual water company without use by any water supply entity to meet the reasonable future requirements of the public;
    - (v) situations where, in the opinion of the state engineer, the nonuse would assist in implementing an existing, approved water management plan; or
    - (vi) the loss of capacity caused by deterioration of the water supply or delivery equipment if the applicant submits, with the application, a specific plan to resume full use of the water right by replacing, restoring, or improving the equipment.
- (5)
- (a) Sixty days before the expiration of a nonuse application, the state engineer shall notify the applicant by mail or by any form of electronic communication through which receipt is verifiable, of the date when the nonuse application will expire.
  - (b) An applicant may file a subsequent nonuse application in accordance with this section.

Amended by Chapter 221, 2013 General Session

Amended by Chapter 380, 2013 General Session

**73-1-4.5 Authorization for water companies to allocate water rights lost by forfeiture or nonuse -- Redemption and retirement of water shares.**

- (1)
- (a) If a water right, to which a mutual water company holds title, ceases or is lost due to forfeiture or abandonment for lack of beneficial use, in whole or in part, the water company shall, through procedures consistent with this section, and as defined in the company's articles of incorporation or bylaws, apportion the loss to each stockholder whose failure to make beneficial use caused the loss of the water right.
  - (b) The water company shall make an apportionment if the Utah Division of Water Rights or a court of proper jurisdiction makes a final decision that a loss has occurred.
  - (c) The water company shall also reduce the amount of water provided to the shareholder in proportion to the amount of the lost water right during an appeal of a decision that reduced the company water rights, unless otherwise ordered by a court of proper jurisdiction.
  - (d) The water company may take any action under this Subsection (1), whether the loss occurred:
    - (i) under Utah Code Annotated Section 73-1-4, including losses that occur as part of a general determination under Title 73, Chapter 4, Determination of Water Rights; or
    - (ii) through any other decision by a court of proper jurisdiction.
- (2)
- (a) If the water company apportions a water right under Subsection (1), a sufficient number of shares to account for the water right lost, including necessary transport or "carrier water"

losses, shall be treated by the water company as shares redeemed by the company from the stockholder responsible for the loss.

- (b) The number of shares owned by that shareholder shall be reduced accordingly on the records of the company.
- (c) Upon the redemption, the authorized shares of the company shall be reduced by the amount of shares that were redeemed under this Subsection (2).
- (3) The redemption and retirement under this section of shares belonging to a stockholder does not relieve the stockholder of liability for unpaid assessments on the stock or debts the shareholder may owe to the water company.

Enacted by Chapter 19, 2002 General Session

### **73-1-5 Use of water a public use.**

The use of water for beneficial purposes, as provided in this title, is hereby declared to be a public use.

No Change Since 1953

### **73-1-6 Eminent domain -- Purposes.**

Any person shall have a right of way across and upon public, private and corporate lands, or other rights of way, for the construction, maintenance, repair and use of all necessary reservoirs, dams, water gates, canals, ditches, flumes, tunnels, pipelines and areas for setting up pumps and pumping machinery or other means of securing, storing, replacing and conveying water for domestic, culinary, industrial and irrigation purposes or for any necessary public use, or for drainage, upon payment of just compensation therefor, but such right of way shall in all cases be exercised in a manner not unnecessarily to impair the practical use of any other right of way, highway or public or private road, or to injure any public or private property.

No Change Since 1953

### **73-1-7 Enlargement for joint use of ditch.**

- (1) When a person with no existing shareholder or contractual rights in the canal or ditch described in this Subsection (1) desires to convey water for irrigation or any other beneficial purpose and there is a canal or ditch already constructed that can be used or enlarged to convey the required quantity of water, the person may use or enlarge the canal or ditch already constructed if:
  - (a) the canal or ditch can be:
    - (i) used without displacing current users or exceeding free board capacity; or
    - (ii) enlarged to convey the required quantity of water necessary to deliver all water authorized for delivery to authorized users of the canal or ditch, provide adequate free board capacity, and carry the additional quantity of water requested by the person;
  - (b) the person compensates:
    - (i) the owner of the canal or ditch to be used or enlarged for the damage caused by the use or enlargement; and
    - (ii) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement;
  - (c) the person pays an equitable proportion of the maintenance and operation of the canal or ditch jointly used or enlarged; and

- (d) the person complies with Subsections (2) through (4).
- (2) An enlargement made in accordance with Subsection (1) shall be made between October 1 and March 1, unless another time is agreed to with:
  - (a) the owner of the canal or ditch; and
  - (b) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement.
- (3) The additional water turned in to the canal or ditch shall bear its proportion of loss by evaporation and seepage.
- (4) Before use or enlargement is allowed in accordance with this section, the person seeking to use or enlarge the canal or ditch shall negotiate in good faith to enter into a written contract governing the relationship, including terms of use and payment, between the person and the following:
  - (a) the canal or ditch owner; and
  - (b) each landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement.
- (5) A person seeking to use or enlarge a canal or ditch in accordance with this section may not rely on the right-of-way provisions of Section 73-1-6 against:
  - (a) an owner of the canal or ditch unless the person has:
    - (i) attempted in good faith to enter into a written contract pursuant to (4)(a); and
    - (ii) failed to enter into a written contract; and
  - (b) a landowner whose land is encumbered by an easement related to the canal or ditch if the carrying of additional water will expand the scope of the easement unless the person has:
    - (i) attempted in good faith to enter into a written contract pursuant to Subsection (4)(b); and
    - (ii) failed to enter into a written contract.
- (6) Unless otherwise agreed to in the written contract referenced in Subsection (4)(a), a person using an existing canal or ditch under this section:
  - (a) does not acquire any voting rights in the entity owning the canal or ditch not already possessed by a person;
  - (b) does not acquire any rights to direct the operation of the canal or ditch;
  - (c) may not add water to the canal or ditch that impairs the water quality in the canal or ditch, or increases the cost of any treatment, to a degree that adversely impacts the intended use of the water already in the canal or ditch;
  - (d) may not add water to the canal or ditch that exceeds the capacity of the canal or ditch, including free board capacity;
  - (e) may not modify any water rights without state engineer approval;
  - (f) shall pay an equitable proportion of construction or upgrade costs, including any related debt service, incurred by the owner of the canal or ditch within five years before the day on which the person begins use of the existing canal or ditch;
  - (g) is liable for an equitable proportion of any liability arising out of the operation or maintenance of the canal or ditch unless the event giving rise to the liability was caused solely by the person or by the owner of the canal or ditch;
  - (h) is solely liable for any liability arising out of the operation or maintenance of the canal or ditch if the event giving rise to the liability was caused solely by the person; and
  - (i) is not liable for any liability arising out of the operation or maintenance of the canal or ditch if the event giving rise to the liability was caused solely by the owner of the canal or ditch.
- (7) This section is not applicable to any type of water conveyance infrastructure other than a canal or ditch described in this section.

- (8) Nothing in this section will eliminate a criminal penalty resulting from conduct prohibited by Section 73-1-15.

Amended by Chapter 136, 2011 General Session

**73-1-8 Duties of owners of ditches -- Safe condition -- Bridges.**

- (1) The owner of any ditch, canal, flume or other watercourse shall:
- (a) maintain it to prevent waste of water or damage to the property of others; and
  - (b) by bridge or otherwise, keep it in good repair where it crosses any public road or highway to prevent obstruction to travel or damage or overflow on the public road or highway.
- (2) The provisions of Subsection (1)(b) do not apply where a governmental entity maintains or elects to maintain a bridge or other device to prevent obstruction to travel or damage or overflow on the public road or highway.
- (3) An owner or operator of a ditch, canal, stream, or river, is immune from suit if:
- (a) the damage or personal injury arises out of, is in connection with, or results from the use of a pedestrian or equestrian trail that is along a ditch, canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river;
  - (b) the trail is designated under a general plan adopted by a municipality under Section 10-9a-401 or by a county under Section 17-27a-401;
  - (c) the trail right-of-way or the right-of-way where the trail is located is open to public use as evidenced by a written agreement between the owner or operator of the trail right-of-way, or of the right-of-way where the trail is located, and the municipality or county where the trail is located; and
  - (d) the written agreement:
    - (i) contains a plan for operation and maintenance of the trail; and
    - (ii) provides that an owner or operator of the trail right-of-way, or of the right-of-way where the trail is located has, at minimum, the same level of immunity from suit as the governmental entity in connection with or resulting from use of the trail.

Amended by Chapter 357, 2007 General Session

**73-1-9 Contribution between joint owners of ditch or reservoir.**

When two or more persons are associated in the use of any dam, canal, reservoir, ditch, lateral, flume or other means for conserving or conveying water for the irrigation of land or for other purposes, each of them shall be liable to the other for the reasonable expenses of maintaining, operating and controlling the same, in proportion to the share in the use or ownership of the water to which he is entitled.

No Change Since 1953

**73-1-10 Conveyance of water rights -- Deed -- Exceptions -- Filing and recording of deed -- Report of water right conveyance.**

- (1)
- (a) A water right, whether evidenced by a decree, a certificate of appropriation, a diligence claim to the use of surface or underground water, or a water user's claim filed in general determination proceedings, shall be transferred by deed in substantially the same manner as is real estate.



- (b) The deed must be recorded in the office of the recorder of the county where the point of diversion of the water is located and in the county where the water is used.
- (c) A recorded deed of a water right shall from the time of its recording in the office of the county recorder constitute notice of its contents to all persons.
- (d)
  - (i) Beginning July 1, 2011, a deed under Subsection (1)(a) may include a water rights addendum as provided in Section 57-3-109.
  - (ii) The state engineer shall consider a water rights addendum that is recorded and forwarded to the state engineer by a county recorder, in accordance with Section 57-3-109, as a submitted report of water right conveyance under Subsection (3).
- (2) The right to the use of water evidenced by shares of stock in a corporation shall be transferred in accordance with the procedures applicable to securities set forth in Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities.
- (3)
  - (a) To update water right ownership on the records of the state engineer, a water right owner shall submit a report of water right conveyance to the state engineer.
  - (b) The report of water right conveyance shall be on forms provided by the state engineer.
  - (c) The report shall be prepared by:
    - (i) or prepared under the direction of and certified by, any of the following persons licensed in Utah:
      - (A) an attorney;
      - (B) a professional engineer;
      - (C) a title insurance producer; or
      - (D) a professional land surveyor; or
    - (ii) the water right owner as authorized by rule of the state engineer.
  - (d) The filing and processing of a report of water right conveyance with the state engineer is neither an adjudication of water right ownership nor an opinion as to title or validity of the water right.
  - (e) The state engineer shall adopt rules that specify:
    - (i) the information required in a report of water right conveyance; and
    - (ii) the procedures for processing the reports.

Amended by Chapter 363, 2013 General Session

**73-1-11 Appurtenant water rights pass to grantee of land -- Exceptions -- Conveyance of a portion of irrigated land -- Right to the use of water evidenced by shares of stock -- Appurtenant water rights -- Evidence -- Where appurtenant -- Partial conveyances of water and land.**

- (1)
  - (a) A water right appurtenant to land shall pass to the grantee of the land unless the grantor:
    - (i) specifically reserves the water right or any part of the water right in the land conveyance document;
    - (ii) conveys a part of the water right in the land conveyance document; or
    - (iii) conveys the water right in a separate conveyance document prior to or contemporaneously with the execution of the land conveyance document.
  - (b) If a county recorder records a document that conveys a water right appurtenant to land as described in Subsection (1)(a) and relies on the document to maintain a tract index described

in Section 17-21-6, the state engineer shall rely on the document as an effective conveyance of a water right appurtenant to land.

- (2)
  - (a) If the water right has been exercised in irrigating different parcels of land at different times, it shall pass to the grantee of a parcel of land on which the water right was exercised next preceding the time the land conveyance was executed.
  - (b) Subsection (2)(a) applies only to land conveyances executed before May 4, 1998.
- (3) In any conveyance, the grantee assumes the obligation for any unpaid assessment.
- (4)
  - (a) The right to the use of water evidenced by shares of stock in a corporation is not a water right appurtenant to land.
  - (b) On or after May 14, 2013, unless provided otherwise in a corporation's articles of incorporation or bylaws, the right to the use of water evidenced by shares of stock in a corporation shall transfer only as provided in Subsection 73-1-10(2).
- (5)
  - (a) This Subsection (5) governs land conveyances executed on or after May 4, 1998, and has no retrospective operation.
  - (b) For purposes of land conveyances only, a water right evidenced by any of the following documents is appurtenant to land:
    - (i) a decree entered by a court;
    - (ii) a certificate issued under Section 73-3-17;
    - (iii) a diligence claim for surface or underground water filed pursuant to Section 73-5-13;
    - (iv) a water user's claim executed for general determination of water rights proceedings conducted pursuant to Title 73, Chapter 4, Determination of Water Rights, or pursuant to Section 73-3-16;
    - (v) an approval for an application to appropriate water issued under Section 73-3-10;
    - (vi) an approval for an application to permanently change the place of use of water issued under Section 73-3-10; or
    - (vii) an approval for an application to exchange water issued under Section 73-3-20.
  - (c) For purposes of land conveyances only, the land to which a water right is appurtenant is the authorized place of use of water as described in the:
    - (i) decree;
    - (ii) certificate;
    - (iii) diligence claim;
    - (iv) water user's claim;
    - (v) approved application to appropriate water;
    - (vi) approved application to permanently change the place of use of water; or
    - (vii) approved exchange application.
  - (d) If a grantor conveys part of the water right in a land conveyance document pursuant to Subsection (1)(b), the portion of the water right not conveyed is presumed to be reserved by the grantor.
  - (e) If the land conveyed constitutes only a portion of the authorized place of use for the water right, the amount of the appurtenant water right that passes to the grantee shall be proportionate to the conveyed portion of the authorized place of use.
- (6) Beginning July 1, 2011, a deed conveying fee simple title to land may include a water rights addendum as provided in Section 57-3-109.

Amended by Chapter 363, 2013 General Session

### **73-1-12 Failure to record -- Effect.**

Every deed of a water right which shall not be recorded as provided in this title shall be void as against any subsequent purchaser, in good faith and for a valuable consideration, of the same water right, or any portion thereof, where his own deed shall be first duly recorded.

No Change Since 1953

### **73-1-13 Corporations -- One water company may own stock in another.**

Any irrigation or reservoir company incorporated and existing under the laws of this state may purchase or subscribe for the capital stock of any other similar corporation which at the time of such purchase or subscription shall be or is about to be incorporated; provided, that such purchase or subscription shall be made only when permitted by the articles of incorporation, and such corporations are hereby permitted and authorized to amend their articles of incorporation so as to authorize such purchase or subscription.

No Change Since 1953

### **73-1-14 Interfering with waterworks or with apportioning official -- Penalty and liability.**

- (1) Any person, who in any way unlawfully interferes with, injures, destroys or removes any dam, head gate, weir, casing, valve, cap or other appliance for the diversion, apportionment, measurement or regulation of water, or who interferes with any person authorized to apportion water while in the discharge of his duties, is guilty of a crime punishable under Section 73-2-27.
- (2) Any person who commits an act defined as a crime under this section is also liable in a civil action for damages or other relief to any person injured by that act.
- (3)
  - (a) A civil action under this section may be brought independent of a criminal action.
  - (b) Proof of the elements of a civil action under this section need only be made by a preponderance of the evidence.

Amended by Chapter 215, 2005 General Session

### **73-1-15 Obstructing canals or other watercourses -- Penalties.**

- (1) Whenever any person has a right-of-way of any established type or title for any canal or other watercourse it shall be unlawful for any person to place or maintain in place any obstruction, or change of the water flow by fence or otherwise, along or across or in such canal or watercourse, except as where said watercourse inflicts damage to private property, without first receiving written permission for the change and providing gates sufficient for the passage of the owner or owners of such canal or watercourse. That the vested rights in the established canals and watercourse shall be protected against all encroachments. That indemnifying agreements may be entered as may be just and proper by governmental agencies.
- (2) Any person violating this section is guilty of a crime punishable under Section 73-2-27.
- (3) Any person who commits an act defined as a crime under this section is also liable for damages or other relief and costs in a civil action to any person injured by that act.
- (4)
  - (a) A civil action under this section may be brought independent of a criminal action.
  - (b) Proof of the elements of a civil action under this section need only be made by a preponderance of the evidence.

Amended by Chapter 215, 2005 General Session

**73-1-16 Petition for hearing to determine validity -- Notice -- Service -- Pleading -- Costs -- Review.**

Where any water users' association, irrigation company, canal company, ditch company, reservoir company, or other corporation of like character or purpose, organized under the laws of this state has entered into or proposes to enter into a contract with the United States for the payment by such association or company of the construction and other charges of a federal reclamation project constructed, under construction, or to be constructed within this state, and where funds for the payment of such charges are to be obtained from assessments levied upon the stock of such association or company, or where a lien is created or will be created against any of the land, property, canals, water rights or other assets of such association or company or against the land, property, canals, water rights or other assets of any stockholder of such association or company to secure the payment of construction or other charges of a reclamation project, the water users' association, irrigation company, canal company, ditch company, reservoir company or other corporation of like character or purpose may file in the district court of the county wherein is situated the office of such association or company a petition entitled "..... Water Users' Association" or "..... Company," as the case may be, "against the stockholders of said association or company and the owners and mortgagees of land within the ..... Federal Reclamation Project." No other or more specific description of the defendants shall be required. In the petition it may be stated that the water users' association, irrigation company, canal company, ditch company, reservoir company or other corporation of like character and purpose has entered into or proposes to enter into a contract with the United States, to be set out in full in said petition, with a prayer that the court find said contract to be valid, and a modification of any individual contracts between the United States and the stockholders of such association or company, or between the association or company, and its stockholders, so far as such individual contracts are at variance with the contract or proposed contract between the association or company and the United States.

Thereupon a notice in the nature of a summons shall issue under the hand and seal of the clerk of said court, stating in brief outline the contents of said petition, and showing where a full copy of said contract or proposed contract may be examined, such notice to be directed to the said defendants under the same general designations, which shall be considered sufficient to give the court jurisdiction of all matters involved and parties interested. Service shall be obtained (a) by publication of such notice once a week for three consecutive weeks (three times) in a newspaper published in each county where the irrigable land of such federal reclamation project is situated, (b) as required in Section 45-1-101 for three weeks, (c) by publishing the notice on the Utah Public Notice Website created in Section 63F-1-701, for three weeks prior to the date of the hearing, and (d) by the posting at least three weeks prior to the date of the hearing on said petition of the notice and a complete copy of the said contract or proposed contract in the office of the plaintiff association or company, and at three other public places within the boundaries of such federal reclamation project. Any stockholder in the plaintiff association or company, or owner, or mortgagee of land within said federal reclamation project affected by the contract proposed to be made by such association or company, may demur to or answer said petition before the date set for such hearing or within such further time as may be allowed therefor by the court. The failure of any persons affected by the said contract to answer or demur shall be construed, so far as such persons are concerned as an acknowledgment of the validity of said contract and as a consent to the modification of said individual contracts if any with such association or company or

with the United States, to the extent that such modification is required to cause the said individual contracts if any to conform to the terms of the contract or proposed contract between the plaintiff and the United States. All persons filing demurrers or answers shall be entered as defendants in said cause and their defense consolidated for hearing or trial. Upon hearing the court shall examine all matters and things in controversy and shall enter judgment and decree as the case warrants, showing how and to what extent, if any, the said individual contracts of the defendants or under which they claim are modified by the plaintiff's contract or proposed contract with the United States. In reaching his conclusion in such causes, the court shall follow a liberal interpretation of the laws, and shall disregard informalities or omissions not affecting the substantial rights of the parties, unless it is affirmatively shown that such informalities or omissions led to a different result than would have been obtained otherwise. The Code of Civil Procedure shall govern matters of pleading and practice as nearly as may be. Costs may be assessed or apportioned among contesting parties in the discretion of the trial court. Review of the judgment of the district court by the Supreme Court may be had as in other civil causes.

Amended by Chapter 90, 2010 General Session

### **73-1-17 Borrowing from federal government authorized.**

That irrigation companies, drainage districts, and irrigation districts heretofore organized under the laws of the state of Utah be and they are hereby authorized and empowered to borrow money from the Reconstruction Finance Corporation, organized pursuant to an Act of Congress of the United States, or from any other governmental loaning agency or agencies to aid them in refunding or refinancing their obligations outstanding on the date of enactment by the Congress of the United States of the Emergency Relief and Construction Act of 1932 through the purchase and retirement of such obligations at a discount, or otherwise, if such obligations were issued in connection with irrigation and/or drainage projects of such companies and/or districts, respectively, which are self-liquidating in character, or where the loan can be repaid by the applicant for such loan by assessment on the issued and outstanding capital stock of the irrigation company, or by assessment on the land or lands within the exterior boundaries of the drainage district, or by assessments on the lands and/or water allotted to lands within the exterior boundaries of the irrigation district.

No Change Since 1953

### **73-1-18 Bonds issued -- Interest -- Lien.**

The money so borrowed shall be evidenced by the bond or bonds or other obligations of the irrigation companies, drainage districts, or irrigation districts borrowing the same and shall constitute and be secured by a first lien on the water rights, canal rights and all assets of the irrigation companies, and on all lands within the exterior boundaries of drainage districts, and on all lands and/or water allotted to lands within the exterior boundaries of the irrigation districts, and shall bear such rate of interest and mature at such time or times as the contracting parties may agree upon.

No Change Since 1953

### **73-1-19 State, agency, county, city or town -- Authority of -- To procure stock of irrigation or pipeline company -- To bring its land within conservation or conservancy district.**

The state of Utah, or any department, board or agency thereof, and any county, city, or town, owning or having control of land or improvements thereon which is in need of a supply of water for such land or the improvements thereon, or in need of facilities for conveyance of such water, is authorized to subscribe for or purchase corporate stock of irrigation companies, pipeline companies, or associations and take the necessary steps to bring the land owned or controlled by any of them within any conservation or conservancy district formed or to be formed under the laws of the state of Utah to procure such supply of water to all intents and purposes as if an individual.

No Change Since 1953

## **Chapter 2**

### **State Engineer - Division of Water Rights**

#### **73-2-1 State engineer -- Term -- Powers and duties -- Qualification for duties.**

- (1) There shall be a state engineer.
- (2) The state engineer shall:
  - (a) be appointed by the governor with the consent of the Senate;
  - (b) hold office for the term of four years and until a successor is appointed; and
  - (c) have five years experience as a practical engineer or the theoretical knowledge, practical experience, and skill necessary for the position.
- (3)
  - (a) The state engineer shall be responsible for the general administrative supervision of the waters of the state and the measurement, appropriation, apportionment, and distribution of those waters.
  - (b) The state engineer may secure the equitable apportionment and distribution of the water according to the respective rights of appropriators.
- (4) The state engineer shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the purposes and provisions of this title, regarding:
  - (a) reports of water right conveyances;
  - (b) the construction of water wells and the licensing of water well drillers;
  - (c) dam construction and safety;
  - (d) the alteration of natural streams;
  - (e) geothermal resource conservation; and
  - (f) enforcement orders and the imposition of fines and penalties.
- (5) The state engineer may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the purposes and provisions of this title, governing:
  - (a) water distribution systems and water commissioners;
  - (b) water measurement and reporting;
  - (c) groundwater recharge and recovery;
  - (d) wastewater reuse;
  - (e) the form, content, and processing procedure for a claim under Section 73-5-13 to surface or underground water that is not represented by a certificate of appropriation;
  - (f) the form and content of a proof submitted to the state engineer under Section 73-3-16;
  - (g) the determination of water rights; or

- (h) the form and content of applications and related documents, maps, and reports.
- (6) The state engineer may bring suit in courts of competent jurisdiction to:
  - (a) enjoin the unlawful appropriation, diversion, and use of surface and underground water without first seeking redress through the administrative process;
  - (b) prevent theft, waste, loss, or pollution of those waters;
  - (c) enable him to carry out the duties of the state engineer's office; and
  - (d) enforce administrative orders and collect fines and penalties.
- (7) The state engineer may:
  - (a) upon request from the board of trustees of an irrigation district under Title 17B, Chapter 2a, Part 5, Irrigation District Act, or another local district under Title 17B, Limited Purpose Local Government Entities - Local Districts, or a special service district under Title 17D, Chapter 1, Special Service District Act, that operates an irrigation water system, cause a water survey to be made of all lands proposed to be annexed to the district in order to determine and allot the maximum amount of water that could be beneficially used on the land, with a separate survey and allotment being made for each 40-acre or smaller tract in separate ownership; and
  - (b) upon completion of the survey and allotment under Subsection (7)(a), file with the district board a return of the survey and report of the allotment.
- (8)
  - (a) The state engineer may establish water distribution systems and define their boundaries.
  - (b) The water distribution systems shall be formed in a manner that:
    - (i) secures the best protection to the water claimants; and
    - (ii) is the most economical for the state to supervise.

Amended by Chapter 221, 2013 General Session

### **73-2-1.1 Division of Water Rights -- Creation -- Power and authority.**

There is created the Division of Water Rights, which shall be within the Department of Natural Resources under the administration and general supervision of the executive director of natural resources. The Division of Water Rights shall be the water rights authority of the state of Utah and is vested with such powers and required to perform such duties as are set forth in law.

Amended by Chapter 198, 1969 General Session

### **73-2-1.2 Director of Division of Water Rights -- Appointment of state engineer.**

The Division of Water Rights shall be administered by the state engineer who shall act as the director of the Division of Water Rights and who shall be appointed as provided by Section 73-2-1. Nothing contained in this act shall modify, repeal or impair the powers or duties of the state engineer relating to the administration, appropriation, adjudication and distribution of the waters of the state of Utah as are conferred upon him pursuant to Title 73, Water and Irrigation, or the provisions of any other laws.

Enacted by Chapter 176, 1967 General Session

### **73-2-1.3 Report to executive director of natural resources.**

The state engineer shall report to the executive director of natural resources at such times and on such administrative matters concerning his office as the executive director may require.

Enacted by Chapter 176, 1967 General Session

### **73-2-1.5 Procedures -- Adjudicative proceedings.**

Except as provided in Sections 63G-4-102 and 73-2-25, the state engineer and the Division of Water Rights shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

### **73-2-2 Oath.**

- (1) Before entering upon the duties of the office, the state engineer shall take and subscribe the constitutional oath of office.
- (2) The state engineer shall file the oath with the Division of Archives.

Amended by Chapter 298, 2010 General Session

### **73-2-4 Deputy and assistants -- Employment and salaries -- Purchase of equipment and supplies.**

For the purpose of performing the duties of his office the state engineer may:

- (1) employ a deputy and all necessary assistants;
- (2) fix division employees' salaries in accordance with salary standards adopted by the Division of Finance; and
- (3) purchase all necessary equipment and supplies.

Amended by Chapter 136, 2007 General Session

### **73-2-5 Aid to district court.**

In aid of the district court the state engineer shall have power to collect facts and make surveys and do all other necessary things, the cost of which shall be paid by the state upon presentation to the director of the Division of Finance of monthly statements and certification by the state engineer.

Amended by Chapter 320, 1983 General Session

### **73-2-7 Aid to federal court.**

The state engineer, when requested by the district court of the United States for the district of Utah, may assist said court in any matter relating to the distribution and use of any of the waters of the state, and may when so requested cooperate with any water commissioner appointed by said court in any such matter.

No Change Since 1953

### **73-2-10 Knowledge of waterways and irrigation -- Suggestions as to amendment or enactment of laws.**

The state engineer shall become conversant with the waterways of the state and its needs as to irrigation matters; and he shall make such suggestions as to the amendment of existing laws or the enactment of new laws as his information and experience shall suggest.

Amended by Chapter 201, 1983 General Session



### **73-2-11 Records -- Certified copies -- Evidence.**

He shall keep on file in his office full and proper records of his work, including all field notes, computations and facts made or collected by him, all of which shall be part of the records of his office and the property of the state. All records, maps and papers recorded or filed in the office of the state engineer shall be open to the public during business hours. The office of the state engineer is hereby declared to be an office of public record, and none of the files, records or documents shall be removed therefrom, except in the custody of the state engineer or one of his deputies. Certified copies of any record or document shall be furnished by the state engineer on demand, upon payment of the reasonable cost of making the same, together with the legal fee for certification. Such copies shall be competent evidence, and shall have the same force and effect as the originals.

No Change Since 1953

### **73-2-12 Seal.**

The state engineer shall have a seal which he shall affix to all certificates issued from his office, and he shall file a description and an impression of the same with the Division of Archives.

Amended by Chapter 67, 1984 General Session

### **73-2-13 Attorney general and county attorneys to counsel.**

In all matters requiring legal advice in the performance of his duties and the prosecution or defense of any action growing out of the performance of his duties, the attorney general or county attorney of the county in which any legal question arises, shall be the legal advisers of the state engineer, and they are hereby required to perform any and all legal services required of them by him without other compensation than their salaries.

Amended by Chapter 186, 1971 General Session

### **73-2-14 Fees of state engineer -- Deposited as a dedicated credit.**

- (1) The state engineer shall charge fees pursuant to Section 63J-1-504 for the following:
  - (a) applications to appropriate water;
  - (b) applications to temporarily appropriate water;
  - (c) applications for permanent or temporary change;
  - (d) applications for exchange;
  - (e) applications for an extension of time in which to resume use of water;
  - (f) applications to appropriate water, or make a permanent or temporary change, for use outside the state filed pursuant to Title 73, Chapter 3a, Water Exports;
  - (g) groundwater recovery permits;
  - (h) diligence claims for surface or underground water filed pursuant to Section 73-5-13;
  - (i) republication of notice to water users after amendment of application where required by this title;
  - (j) applications to segregate;
  - (k) requests for an extension of time in which to submit proof of appropriation not to exceed 14 years after the date of approval of the application;
  - (l) requests for an extension of time in which to submit proof of appropriation 14 years or more after the date of approval of the application;
  - (m) groundwater recharge permits;

- (n) applications for a well driller's license, annual renewal of a well driller's license, and late annual renewal of a well driller's license;
  - (o) certification of copies;
  - (p) preparing copies of documents;
  - (q) reports of water right conveyance; and
  - (r) requests for a livestock water use certificate under Section 73-3-31.
- (2) Fees for the services specified in Subsections (1)(a) through (i) shall be based upon the rate of flow or volume of water. If it is proposed to appropriate by both direct flow and storage, the fee shall be based upon either the rate of flow or annual volume of water stored, whichever fee is greater.
- (3) Fees collected under this section:
- (a) shall be deposited in the General Fund as a dedicated credit to be used by the Division of Water Rights; and
  - (b) may only be used by the Division of Water Rights to:
    - (i) meet the publication of notice requirements under this title;
    - (ii) process reports of water right conveyance;
    - (iii) process a request for a livestock water use certificate; and
    - (iv) hire an employee to assist with processing an application.

Amended by Chapter 183, 2009 General Session

### **73-2-15 Agreements with federal and state agencies -- Investigations, surveys or adjudications.**

The state engineer, for and on behalf of the state of Utah, with the approval of the executive director of natural resources and the governor, is authorized to enter into agreements with any federal or state agency, subdivision or institution for cooperation in making snow surveys and investigations of both underground and surface water resources of the state. The state engineer is further authorized to cooperate with such agencies, subdivisions and institutions, with the approval of the executive director and the governor, for the investigation of flood and erosion control and for the adjudication of water rights. The expenses of such investigations, surveys and adjudications shall be divided between the cooperating parties upon an equitable basis.

Amended by Chapter 198, 1969 General Session

### **73-2-16 Arbitration -- Confirmation by district court.**

The state engineer is authorized to conduct informal proceedings for the arbitration or settlement of disputes over water or the distribution thereof; provided all persons having an interest in the water in controversy shall in writing agree to any settlement effected thereby, and provided further that settlements shall be confirmed by decree of a court of competent jurisdiction.

No Change Since 1953

### **73-2-17 Authorization of cooperative investigations of groundwater resources.**

The state engineer, for and on behalf of the state of Utah, with the approval of the executive director and the governor, is authorized and directed to enter into an agreement with the United States geological survey or any other federal or state agency, for cooperation in making investigations of the groundwater resources of the state and reporting thereon.

Amended by Chapter 198, 1969 General Session

**73-2-20 Employees authorized to enter and cross lands -- Injuring monuments a crime.**

- (1) In order to carry out the purposes of this title any person properly employed hereunder is authorized to enter and cross all lands within the state if no damage is done to private property.
- (2) It is a crime punishable under Section 73-2-27 for any person to knowingly or intentionally remove or injure any equipment, permanent marks, or monuments made or installed by any person properly employed under this title.

Amended by Chapter 215, 2005 General Session

**73-2-22 Emergency flood powers -- Action to enforce orders -- Access rights to private and public property -- Injunctive relief against state engineer's decisions -- Judicial review provisions not applicable.**

Whenever the state engineer, with approval of the chair of the Emergency Management Administration Council created in Section 63K-3-201, makes a written finding that any reservoir or stream has reached or will reach during the current water year a level far enough above average and in excess of capacity that public safety is or is likely to be endangered or that substantial property damage is occurring or is likely to occur, he shall have emergency powers until the danger to the public and property is abated. Emergency powers shall consist of the authority to control stream flow and reservoir storage or release. The state engineer must protect existing water rights to the maximum extent possible when exercising emergency powers. Any action taken by the state engineer under this section shall be by written order.

If any person refuses or neglects to comply with any order of the state engineer issued pursuant to his emergency powers, the state engineer may bring action in the name of the state in the district court to enforce them. In carrying out his emergency powers, the state engineer shall have rights of access to private and public property.

Any person affected by a decision of the state engineer made under his emergency powers shall have the right to seek injunctive relief, including temporary restraining orders and temporary injunctions in any district court of the county where that person resides. No order of the state engineer shall be enjoined or set aside unless shown by clear and convincing evidence that an emergency does not in fact exist or that the order of the state engineer is arbitrary or capricious. The provisions of Sections 73-3-14 and 73-3-15 shall not be applicable to any order of the state engineer issued pursuant to this section.

Amended by Chapter 221, 2013 General Session

**73-2-23 Emergency powers of state engineer -- Multi-county flood mitigation activities -- Termination of assistance.**

- (1) In addition to the emergency powers under Section 73-2-22, the state engineer shall assist counties in emergency flood mitigation on intercounty waterways when all the following conditions exist:
  - (a) two or more counties are involved;
  - (b) the flood mitigation activity has or may have adverse effect on the county;
  - (c) the county executive of that adversely impacted county requests the state engineer's involvement;
  - (d) the requesting county is providing an ongoing flood control program with jurisdiction-wide funding equivalent to .0004 per dollar of taxable value of taxable property; and

- (e) the requesting county has established a flood control program through zoning.
- (2) Multi-county flood mitigation activities by the state engineer shall include:
  - (a) assisting the counties in emergency flood mitigation planning;
  - (b) furnishing engineering or other technical services;
  - (c) making recommendations in emergency situations, and, if requested, participating in making emergency flood control decisions; and
  - (d) in the event a decision is not reached, the final decision-making authority.
- (3) The assistance or involvement will cease when in the state engineer's judgment the flood conditions or potential for flooding subsides or when the county governing bodies of all affected counties request that the jurisdiction cease.

Amended by Chapter 227, 1993 General Session

**73-2-23.1 Assistance of state engineer in management of flood waters.**

In addition to his other flood management authority under Sections 73-2-22 and 73-2-23, the state engineer may assist in the management of flood waters pursuant to court judgments and decrees.

Enacted by Chapter 228, 1985 General Session

**73-2-25 State engineer enforcement powers.**

- (1) For purposes of this section, "initial order" means one of the following issued by the state engineer:
  - (a) a notice of violation; or
  - (b) a cease and desist order.
- (2)
  - (a) Except as provided in Subsection (2)(b), the state engineer may commence an enforcement action under this section if the state engineer finds that a person:
    - (i) is diverting, impounding, or using water for which no water right has been established;
    - (ii) is diverting, impounding, or using water in violation of an existing water right;
    - (iii) violates Section 73-5-4;
    - (iv) violates Section 73-5-9;
    - (v) violates a written distribution order from the state engineer;
    - (vi) violates Section 73-3-29;
    - (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam Safety;
    - (viii) fails to submit a report required by Section 73-3-25; or
    - (ix) engages in well drilling without a license required by Section 73-3-25.
  - (b) The state engineer may not commence an enforcement action against a person under Subsection (2)(a)(i), if the person directly captures, or stores, precipitation on the surface of, or under, a parcel owned or leased by the person, including in a catch basin, storm drain pipe, swell, or pond, if the collection or storage:
    - (i) is consistent with local laws and ordinances;
    - (ii) does not interfere with an existing water right; and
    - (iii) is designed to slow, detain, or retain storm water or protect watersheds from pollution with the intention that the precipitation:
      - (A) absorbs into the ground or is released for discharge; and
      - (B) is not put to beneficial use.

- (c) To commence an enforcement action under this section, the state engineer shall issue an initial order, which shall include:
  - (i) a description of the violation;
  - (ii) notice of any penalties to which a person may be subject under Section 73-2-26; and
  - (iii) notice that the state engineer may treat each day's violation of the provisions listed in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).
- (d) The state engineer's issuance and enforcement of an initial order is exempt from Title 63G, Chapter 4, Administrative Procedures Act.
- (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer shall make rules necessary to enforce an initial order, which shall include:
  - (a) provisions consistent with this section and Section 73-2-26 for enforcement of the initial order if a person to whom an initial order is issued fails to respond to the order or abate the violation;
  - (b) the right to a hearing, upon request by a person against whom an initial order is issued; and
  - (c) provisions for timely issuance of a final order after:
    - (i) the person to whom the initial order is issued fails to respond to the order or abate the violation; or
    - (ii) a hearing held under Subsection (3)(b).
- (4) A person may not intervene in an enforcement action commenced under this section.
- (5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the state engineer shall serve a copy of the final order on the person against whom the order is issued by:
  - (a) personal service under Utah Rules of Civil Procedure 5; or
  - (b) certified mail.
- (6)
  - (a) The state engineer's final order may be reviewed by trial de novo by the district court in:
    - (i) Salt Lake County; or
    - (ii) the county where the violation occurred.
  - (b) A person shall file a petition for judicial review of the state engineer's final order issued under this section within 20 days from the day on which the final order was served on that person.
- (7) The state engineer may bring suit in a court of competent jurisdiction to enforce a final order issued under this section.
- (8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the state may recover all court costs and a reasonable attorney fee.

Amended by Chapter 369, 2014 General Session

### **73-2-26 Administrative penalties.**

- (1)
  - (a) As part of a final order issued under Section 73-2-25, the state engineer may order that a person to whom an order is issued:
    - (i) pay an administrative fine not to exceed:
      - (A) \$5,000 for each knowing violation; or
      - (B) \$1,000 for each violation that is not knowing;
    - (ii) replace up to 200% of water taken; and
    - (iii) be liable for any expense incurred by the state engineer or division in investigating and stopping the violation.

- (b) The definition of "knowingly" under Subsection 76-2-103(2) shall apply to determinations under Subsection (1)(a)(i).
  - (c) The penalties described in Subsection (1)(a) shall be in addition to:
    - (i) any criminal penalty established for a violation described in Subsection (1); and
    - (ii) any private right of action.
  - (d)
    - (i) Each day of a continuing violation of the provisions described in Subsection 73-2-25(2)(a) or an initial or final order issued under Section 73-2-25 is a separate violation.
    - (ii) A penalty may not be imposed for a violation of the provisions listed in Subsection 73-2-25(2)(a) or an initial or a final order issued under Section 73-2-25 for a violation occurring more than 12 months before the day on which a notice of violation is issued.
  - (e) Separate violations under Subsection (1)(d) may be consolidated for resolution in one enforcement proceeding under Section 73-2-25.
  - (f) The state engineer has discretion to pursue an administrative fine, order requiring replacement, or both.
- (2) Before imposing a fine or ordering replacement under Subsection (1), the state engineer shall consider:
- (a) the value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;
  - (b) the gravity of the violation, including the economic injury or impact to others;
  - (c) whether the person subject to fine or replacement attempted to comply with the state engineer's orders; and
  - (d) the violator's economic benefit from the violation.
- (3)
- (a) The state engineer may require that the water unlawfully taken be replaced after:
    - (i) a person fails to request judicial review of a final order issued under Section 73-2-25; or
    - (ii) the completion of judicial review, including any appeals.
  - (b) The state engineer's order shall require that replacement of water begin within one year of the day on which:
    - (i) the time period for requesting judicial review of a final order issued under Section 73-2-25 expires without a person requesting judicial review of the final order; or
    - (ii) the completion of judicial review, including any appeals.
- (4) Water replaced under Subsection (3) shall be taken from water that the person subject to the order requiring replacement would be entitled to use during the replacement period.
- (5)
- (a) If the state engineer issues an order requiring replacement, a copy of the order shall be placed in the Division of Water Rights' water rights records.
  - (b) The order requiring replacement shall constitute a lien upon the water right affected if the state engineer files a notice of lien in the office of the county recorder in the county where the place of use of the water right is located.
  - (c) A notice of lien under Subsection (5)(b) shall include a legal description of the place of use of the water right.
- (6) Any money collected under this section shall be deposited into the General Fund.

Enacted by Chapter 33, 2005 General Session

### **73-2-27 Criminal penalties.**

- (1) This section applies to offenses committed under:

- (a) Section 73-1-14;
  - (b) Section 73-1-15;
  - (c) Section 73-2-20;
  - (d) Subsection 73-3-3(9);
  - (e) Section 73-3-26;
  - (f) Section 73-3-29;
  - (g) Section 73-5-9;
  - (h) Section 76-10-201;
  - (i) Section 76-10-202; and
  - (j) Section 76-10-203.
- (2) Under circumstances not amounting to an offense with a greater penalty under Subsection 76-6-106(2)(b)(ii) or Section 76-6-404, violation of a provision listed in Subsection (1) is punishable:
- (a) as a felony of the third degree if:
    - (i) the value of the water diverted or property damaged or taken is \$2,500 or greater; and
    - (ii) the person violating the provision has previously been convicted of violating the same provision;
  - (b) as a class A misdemeanor if:
    - (i) the value of the water diverted or property damaged or taken is \$2,500 or greater; or
    - (ii) the person violating the provision has previously been convicted of violating the same provision; or
  - (c) as a class B misdemeanor if Subsection (2)(a) or (b) does not apply.

Enacted by Chapter 215, 2005 General Session

**73-2-28 Costs and fees in civil actions.**

The prevailing party in a civil action is entitled to collect reasonable costs and attorney fees, if that action is brought:

- (1) under Section 73-1-14;
- (2) under Section 73-1-15;
- (3) for injuries caused by a diversion of water for which no water right has been established;
- (4) for injuries caused by a diversion of water in violation of an existing water right; or
- (5) for injuries caused by a violation of a written distribution order from the state engineer.

Enacted by Chapter 33, 2005 General Session

**73-2-29 Agreement with another state -- Regulation, distribution, and administration of interstate water.**

- (1) The state engineer, after receiving approval from the executive director of the Department of Natural Resources and the governor, may enter into an agreement with another state to regulate, distribute, and administer the water from an interstate surface water source that is not otherwise subject to an interstate compact.
- (2) The state engineer may coordinate with another state to implement:
  - (a) the terms of an agreement entered into according to Subsection (1); and
  - (b) an interstate compact that regulates, distributes, or administers an interstate surface water source.

Enacted by Chapter 67, 2008 General Session

## **Chapter 3 Appropriation**

### **73-3-1 Appropriation -- Manner of acquiring water rights.**

- (1) A person may acquire a right to the use of the unappropriated public waters in this state only as provided for in this title.
- (2) The appropriation of public waters in the state shall comply with the requirements of this title.
- (3) Except as provided in Subsection (7), a person obtaining, initiating the use of, or providing notice of intent to appropriate a water right shall comply with the requirements of this chapter.
- (4) An appropriation may be made only for a useful and beneficial purpose.
- (5)
  - (a) Between appropriators, the one first in time is first in rights.
  - (b) A use designated by an application to appropriate any of the unappropriated waters of the state that would materially interfere with a more beneficial use of the water shall be dealt with as provided in Section 73-3-8.
- (6) A person may not acquire a right to the use of water either appropriated or unappropriated by adverse use or adverse possession.
- (7) Notwithstanding Section 73-3-2, a person may directly capture and store precipitation as provided in Section 73-3-1.5.

Amended by Chapter 19, 2010 General Session

### **73-3-1.5 Capture and storage of precipitation.**

- (1) As used in this section, "parcel" means an identifiable contiguous unit of property that is treated as separate for valuation or zoning purposes and includes an improvement on that unit of property.
- (2) Notwithstanding Section 73-3-2, a person may:
  - (a) directly capture and store precipitation on a parcel owned or leased by the person in accordance with Subsection (3) or (4); and
  - (b) place the water captured and stored as provided in Subsection (2)(a) to beneficial use on the parcel on which the water is captured and stored.
- (3) After registering for the capture and storage of precipitation in accordance with Subsection (5), a person may collect and store precipitation in a container installed in accordance with the State Construction Code or an approved code under Title 15A, State Construction and Fire Codes Act, if:
  - (a) for a person who uses only one container on a parcel, the total capacity of the container is no more than 2,500 gallons; or
  - (b) for a person who uses more than one container on a parcel, the aggregate capacity of the containers is no more than 2,500 gallons.
- (4) A person may collect and store precipitation, without registering under Subsection (5), in no more than two covered storage containers if neither covered storage container has a maximum storage capacity of greater than 100 gallons.
- (5)
  - (a) The state engineer shall provide a website on which a person may register as required by Subsection (3).



- (b) To register, a person shall complete information required by the state engineer including the:
  - (i) name and address of the person capturing or storing precipitation;
  - (ii) total capacity of all containers storing precipitation; and
  - (iii) street address or other suitable description of the location where precipitation is to be captured and stored.
- (6) Beneficial use of water under Subsection (2)(b) does not constitute a water right and may not be:
  - (a) changed under Section 73-3-3;
  - (b) assigned; or
  - (c) consolidated with a water right.
- (7) A person who beneficially uses water under Subsection (2)(b) shall comply with:
  - (a) state law; and
  - (b) local health and safety rules and regulations.

Amended by Chapter 260, 2013 General Session

**73-3-2 Application for right to use unappropriated public water -- Necessity -- Form -- Contents -- Validation of prior applications by state or United States or officer or agency thereof.**

- (1)
  - (a) In order to acquire the right to use any unappropriated public water in this state, any person who is a citizen of the United States, or who has filed his declaration of intention to become a citizen as required by the naturalization laws, or any association of citizens or declarants, or any corporation, or the state of Utah by the directors of the divisions of travel development, business and economic development, wildlife resources, and state lands and forestry, or the executive director of the Department of Transportation for the use and benefit of the public, or the United States of America shall make an application in a form prescribed by the state engineer before commencing the construction, enlargement, extension, or structural alteration of any ditch, canal, well, tunnel, or other distributing works, or performing similar work tending to acquire such rights or appropriation, or enlargement of an existing right or appropriation.
  - (b) The application shall be upon a form to be furnished by the state engineer and shall set forth:
    - (i) the name and post office address of the person, corporation, or association making the application;
    - (ii) the nature of the proposed use for which the appropriation is intended;
    - (iii) the quantity of water in acre-feet or the flow of water in second-feet to be appropriated;
    - (iv) the time during which it is to be used each year;
    - (v) the name of the stream or other source from which the water is to be diverted;
    - (vi) the place on the stream or source where the water is to be diverted and the nature of the diverting works;
    - (vii) the dimensions, grade, shape, and nature of the proposed diverting channel; and
    - (viii) other facts that clearly define the full purpose of the proposed appropriation.
- (2)
  - (a) In addition to the information required in Subsection (1)(b), if the proposed use is for irrigation, the application shall show:
    - (i) the legal subdivisions of the land proposed to be irrigated, with the total acreage thereof; and
    - (ii) the character of the soil.
  - (b) In addition to the information required in Subsection (1)(b), if the proposed use is for developing power, the application shall show:

- (i) the number, size, and kind of water wheels to be employed and the head under which each wheel is to be operated;
  - (ii) the amount of power to be produced;
  - (iii) the purposes for which and the places where it is to be used; and
  - (iv) the point where the water is to be returned to the natural stream or source.
- (c) In addition to the information required in Subsection (1)(b), if the proposed use is for milling or mining, the application shall show:
- (i) the name of the mill and its location or the name of the mine and the mining district in which it is situated;
  - (ii) its nature; and
  - (iii) the place where the water is to be returned to the natural stream or source.
- (d)
- (i) The point of diversion and point of return of the water shall be designated with reference to the United States land survey corners, mineral monuments or permanent federal triangulation or traverse monuments, when either the point of diversion or the point of return is situated within six miles of the corners and monuments.
  - (ii) If the point of diversion or point of return is located in unsurveyed territory, the point may be designated with reference to a permanent, prominent natural object.
  - (iii) The storage of water by means of a reservoir shall be regarded as a diversion, and the point of diversion in those cases is the point where the longitudinal axis of the dam crosses the center of the stream bed.
  - (iv) The point where released storage water is taken from the stream shall be designated as the point of rediversion.
  - (v) The lands to be inundated by any reservoir shall be described as nearly as may be, and by government subdivision if upon surveyed land. The height of the dam, the capacity of the reservoir, and the area of the surface when the reservoir is filled shall be given.
  - (vi) If the water is to be stored in an underground area or basin, the applicant shall designate, with reference to the nearest United States land survey corner if situated within six miles of it, the point of area of intake, the location of the underground area or basin, and the points of collection.
- (e) Applications for the appropriation of water filed prior to the enactment of this title, by the United States of America, or any officer or agency of it, or the state of Utah, or any officer or agency of it, are validated, subject to any action by the state engineer.

Amended by Chapter 136, 2001 General Session

**73-3-3 Permanent or temporary changes in point of diversion, place of use, or purpose of use.**

(1) For purposes of this section:

- (a) "Permanent change" means a change for an indefinite period of time with an intent to relinquish the original point of diversion, place of use, or purpose of use.
- (b) "Temporary change" means a change for a fixed period of time not exceeding one year.

(2)

- (a) Subject to Subsection (2)(c), a person entitled to the use of water may make permanent or temporary changes in the:
  - (i) point of diversion;
  - (ii) place of use; or
  - (iii) purpose of use for which the water was originally appropriated.

- (b) Except as provided by Section 73-3-30, a change may not be made if it impairs a vested water right without just compensation.
- (c) A change application on a federal reclamation project water right shall be signed by:
  - (i) the local water users organization that is contractually responsible for:
    - (A) the operation and maintenance of the project; or
    - (B) the repayment of project costs; and
  - (ii) the record owner of the water right.
- (3) A person entitled to use water shall change a point of diversion, place of use, or purpose of water use, including water involved in a general adjudication or other suit, in the manner provided in this section.
- (4)
  - (a) A person entitled to use water may not make a change unless the state engineer approves the change application.
  - (b) A person entitled to use water shall submit a change application upon forms furnished by the state engineer and shall set forth:
    - (i) the applicant's name;
    - (ii) the water right description;
    - (iii) the water quantity;
    - (iv) the stream or water source;
    - (v) if applicable, the point on the stream or water source where the water is diverted;
    - (vi) if applicable, the point to which it is proposed to change the diversion of the water;
    - (vii) the place, purpose, and extent of the present use;
    - (viii) the place, purpose, and extent of the proposed use; and
    - (ix) any other information that the state engineer requires.
- (5)
  - (a) The state engineer shall follow the same procedures, and the rights and duties of the applicants with respect to applications for permanent changes of point of diversion, place of use, or purpose of use shall be the same, as provided in this title for applications to appropriate water.
  - (b) The state engineer may waive notice for a permanent change application involving only a change in point of diversion of 660 feet or less.
- (6)
  - (a) The state engineer shall investigate all temporary change applications.
  - (b) If the state engineer finds that the temporary change will not impair a vested water right, the state engineer shall issue an order authorizing the change.
  - (c) If the state engineer finds that the change sought might impair a vested water right, before authorizing the change, the state engineer shall give notice of the application to any person whose right may be affected by the change.
  - (d) Before making an investigation or giving notice, the state engineer may require the applicant to deposit a sum of money sufficient to pay the expenses of the investigation and publication of notice.
- (7)
  - (a) Except as provided by Section 73-3-30, the state engineer may not reject a permanent or temporary change application for the sole reason that the change would impair a vested water right.
  - (b) If otherwise proper, the state engineer may approve a permanent or temporary change application for part of the water involved or upon the condition that the applicant acquire the conflicting water right.

- (8)
  - (a) A person holding an approved application for the appropriation of water may change the point of diversion, place of use, or purpose of use.
  - (b) A change of an approved application does not:
    - (i) affect the priority of the original application; or
    - (ii) extend the time period within which the construction of work is to begin or be completed.
- (9) Any person who changes or who attempts to change a point of diversion, place of use, or purpose of use, either permanently or temporarily, without first applying to the state engineer in the manner provided in this section:
  - (a) obtains no right;
  - (b) is guilty of a crime punishable under Section 73-2-27 if the change or attempted change is made knowingly or intentionally; and
  - (c) is guilty of a separately punishable offense for each day of the unlawful change.
- (10)
  - (a) This section does not apply to the replacement of an existing well by a new well drilled within a radius of 150 feet from the point of diversion of the existing well.
  - (b) Any replacement well must be drilled in accordance with the requirements of Section 73-3-28.

Amended by Chapter 229, 2012 General Session

**73-3-3.5 Application for a change of point of diversion, place of use, or purpose of use of water in a water company made by a shareholder.**

- (1) As used in this section:
  - (a) "Shareholder" means the owner of a share of stock, or other evidence of stock ownership, that entitles the person to a proportionate share of water in a water company.
  - (b) "Water company" means any company, operating for profit or not for profit, in which a shareholder has the right to receive a proportionate share, based on that shareholder's ownership interest, of water delivered by the company.
- (2) A shareholder who seeks to change the point of diversion, place of use, or purpose of use of the shareholder's proportionate share of water in the water company shall submit a request for the change, in writing, to the water company. This request shall include the following information:
  - (a) the details of the requested change, which may include the point of diversion, period of use, place, or nature of use;
  - (b) the quantity of water sought to be changed;
  - (c) the certificate number of the stock affected by the change;
  - (d) a description of the land proposed to be retired from irrigation pursuant to Section 73-3-3, if the proposed change in place or nature of use of the water involves a situation where the water was previously used for irrigation;
  - (e) an agreement by the shareholder to continue to pay all applicable corporate assessments on the share affected by the change; and
  - (f) any other information that the water company may reasonably need to evaluate the requested change application.
- (3)
  - (a) A water company shall make a decision and provide written notice of that decision on a shareholder's request for a change application within 120 days from receipt of the request.
  - (b) Based on the facts and circumstances of each proposed change, a water company may take the following action:

- (i) approve the change request;
  - (ii) approve the change request with conditions; or
  - (iii) deny the change request.
- (c) If the water company fails to respond to a shareholder's request for a change application, pursuant to Subsection (3)(a), the failure to respond shall be considered to be a denial of the request.
- (d) The water company may not withhold approval if any potential damage, liability, or impairment to the water company, or its shareholders, can be reasonably mitigated without cost to the water company.
- (e) A water company may consider the following factors in evaluating change applications:
  - (i) any increased cost to the water company or its shareholders;
  - (ii) interference with the water company's ability to manage and distribute water for the benefit of all shareholders;
  - (iii) whether the proposed change represents more water than the shareholder's pro rata share of the water company's right;
  - (iv) impairment of either the quantity or quality of water delivered to other shareholders under the existing water rights of the water company, including rights to carrier water;
  - (v) whether the proposed change would cause a violation of any statute, ordinance, regulation, or order of a court or governmental agency;
  - (vi) whether the shareholder has or can arrange for the beneficial use of water to be retired from irrigation within the water company's service under the proposed change; or
  - (vii) the cumulative effects that the approval of the change application may have on other shareholders or water company operations.
- (4) The water company may require that all costs associated with the change application, including costs of submitting proof, be paid by the shareholder.
- (5)
  - (a) The shareholder requesting the change must be current on all water company assessments and agree to continue to pay all applicable future assessments, except that the shareholder may choose to prepay any portion of the water company assessments attributable to an existing debt of the water company.
  - (b) Other than prepaid assessments, the water company may require that the shareholder continue to pay all applicable assessments.
- (6) If the water company approves the requested change, with or without conditions, the change application may be filed with the state engineer, and must:
  - (a) be signed on behalf of the water company; or
  - (b) be accompanied by written authorization from the water company assenting to the change.
- (7)
  - (a) The state engineer may evaluate a change application authorized by a water company under this section in the same manner and using the same criteria that he or she uses to evaluate any other change application.
  - (b) Nothing in this section shall limit the authority of the state engineer in evaluating and processing any change application.
- (8) If an application authorized by a water company under this section is approved by the state engineer, the shareholder may file requests for extensions of time to submit proof of beneficial use under the change application without further permission of the water company.
- (9)
  - (a) Change applications approved under this section are subject to all conditions imposed by the water company and the state engineer.

- (b) If a shareholder fails to comply with all of the conditions imposed by the water company, the water company may, after written notice to the shareholder and after allowing reasonable time to remedy the failure, withdraw its approval of the application, and petition the state engineer for an order canceling the change application.
  - (c) The water company may not revoke its approval of the change application or seek an order canceling the application if the conditions are substantially satisfied.
- (10)
- (a) The shareholder requesting the change shall have a cause of action, including an award of actual damages incurred, against the water company if the water company:
    - (i) unreasonably withholds approval of a requested change;
    - (ii) imposes unreasonable conditions in its approval; or
    - (iii) withdraws approval of a change application in a manner other than as provided in Subsection (9).
  - (b) The action referred to in Subsection (10)(a) shall be referred to mediation by the court under Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, unless both parties decline mediation.
  - (c) If mediation is declined, the prevailing party to the action shall be entitled to costs and reasonable attorney fees.

Amended by Chapter 3, 2008 General Session

#### **73-3-4 "Received," "filed" defined.**

Whenever in this title the word "received" is used with reference to any paper deposited in the office of the state engineer, it shall be deemed to mean the date when such paper was first deposited in the state engineer's office; and whenever the term "filed" is used, it shall be deemed to mean the date when such paper was acceptably completed in form and substance and filed in said office.

No Change Since 1953

#### **73-3-5 Action by engineer on applications.**

- (1) On receipt of each application containing the information required by Section 73-3-2, and payment of the filing fee, it shall be the duty of the state engineer to make an endorsement thereon of the date of its receipt, and to make a record of such receipt for that purpose.
- (2) It shall be the duty of the state engineer to examine the application and determine whether any corrections, amendments or changes are required for clarity and if so, see that such changes are made before further processing.
- (3) All applications which shall comply with the provisions of this chapter and with the regulations of the state engineer shall be filed and recorded.
- (4) The state engineer may issue a temporary receipt to drill a well at any time after the filing of an application to appropriate water therefrom, as provided by this section if all fees be advanced and if in his judgment there is unappropriated water available in the proposed source and there is no likelihood of impairment of existing rights; provided, however, that the issuance of such temporary permits shall not dispense with the publishing of notice and the final approval or rejection of such application by the state engineer, as provided by this chapter.
- (5) The state engineer may send the necessary notices and address all correspondence relating to each application to the owner thereof as shown by the state engineer's records, or to his attorney in fact provided a written power of attorney is filed in the state engineer's office.

Amended by Chapter 136, 2001 General Session

**73-3-5.5 Temporary applications to appropriate water -- Approval by engineer -- Expiration -- Proof of appropriation not required.**

- (1) The state engineer may issue temporary applications to appropriate water for beneficial purposes.
- (2) The provisions of this chapter governing regular applications to appropriate water shall apply to temporary applications with the following exceptions:
  - (a)
    - (i) The state engineer shall undertake a thorough investigation of the proposed appropriation, and if the temporary application complies with the provisions of Section 73-3-8, may make an order approving the application.
    - (ii) If the state engineer finds that the appropriation sought might impair other rights, before approving the application, the state engineer shall give notice of the application to all persons whose rights may be affected by the temporary appropriations.
  - (b) The state engineer may issue a temporary application for a period of time not exceeding one year.
  - (c)
    - (i) The state engineer, in the approval of a temporary application, may make approval subject to whatever conditions and provisions he considers necessary to fully protect prior existing rights.
    - (ii) If the state engineer determines that it is necessary to have a water commissioner distribute the water under a temporary application for the protection of other vested rights, the state engineer may assess the distribution costs against the holder of the temporary application.
  - (d)
    - (i) A temporary application does not vest in its holder a permanent vested right to the use of water.
    - (ii) A temporary application automatically expires and is cancelled according to its terms.
  - (e) Proof of appropriation otherwise required under this chapter is not required for temporary applications.

Amended by Chapter 161, 1987 General Session

**73-3-5.6 Applications to appropriate or permanently change a small amount of water -- Proof of appropriation or change.**

- (1) As used in this section:
  - (a) "Application" means an application to:
    - (i) appropriate a small amount of water; or
    - (ii) permanently change a small amount of water.
  - (b) "Livestock water right" means a right for:
    - (i) livestock to consume water:
      - (A) directly from the water source; or
      - (B) from an impoundment into which the water is diverted; and
    - (ii) associated uses of water related to the raising and care of livestock.
  - (c) "Proof" means proof of:
    - (i) appropriation; or
    - (ii) permanent change.

- (d) "Small amount of water" means the amount of water necessary to meet the requirements of:
  - (i) one residence;
  - (ii) 1/4 acre of irrigable land; and
  - (iii) a livestock watering right for:
    - (A) 10 cattle; or
    - (B) the equivalent amount of water of Subsection (1)(d)(iii)(A) for livestock other than cattle.
- (2) The state engineer may approve an application if:
  - (a) the state engineer undertakes a thorough investigation of the application;
  - (b) notice is provided in accordance with Subsection (3);
  - (c) the application complies with the state engineer's regional policies and restrictions and Section 73-3-3 or 73-3-8, as applicable; and
  - (d) the application does not conflict with a political subdivision's ordinance:
    - (i) for planning, zoning, or subdivision regulation; or
    - (ii) under Section 10-8-15.
- (3)
  - (a) Advertising of an application specified in Subsection (2) is at the discretion of the state engineer.
  - (b) If the state engineer finds that the uses proposed by the application may impair other rights, before approving the application, the state engineer shall give notice of the application according to Section 73-3-6.
- (4) An applicant receiving approval under this section is responsible for the time limit for construction and submitting proof as required by Subsection (6).
- (5) Sixty days before the end of the time limit for construction, the state engineer shall notify the applicant by mail when proof is due.
- (6)
  - (a) Notwithstanding Section 73-3-16, the state engineer shall issue a certificate under Section 73-3-17 if an applicant files an affidavit, on a form provided by the state engineer, as proof.
  - (b) The affidavit shall:
    - (i) specify the amount of:
      - (A) irrigated land; and
      - (B) livestock watered; and
    - (ii) declare the residence is constructed and occupied.
  - (c) The form provided by the state engineer under Subsection (6)(a) may require the information the state engineer determines is necessary to maintain accurate records regarding the point of diversion and place of use.
- (7) If an applicant does not file the proof required by Subsection (6) by the day on which the time limit for construction ends, the application lapses under Section 73-3-18.
- (8)
  - (a) An applicant whose application lapses may file a request with the state engineer to reinstate the application, if the applicant demonstrates that the applicant or the applicant's predecessor in interest:
    - (i) constructed and occupied a residence within the time limit for construction; and
    - (ii) beneficially uses the water.
  - (b) If an applicant meets the requirements of Subsection (8)(a) and submits an affidavit as provided by Subsection (6), the state engineer shall issue a certificate:
    - (i) for the amount of water actually in use as described in the affidavit; and
    - (ii) with a priority date of the day on which the applicant files the request for reinstatement of the application.



Amended by Chapter 367, 2009 General Session

**73-3-6 Publication of notice of application -- Corrections or amendments of applications.**

- (1)
  - (a) When an application is filed in compliance with this title, the state engineer shall publish a notice of the application:
    - (i) once a week for a period of two successive weeks in a newspaper of general circulation in the county in which the source of supply is located, and where the water is to be used; and
    - (ii) in accordance within Section 45-1-101 for two weeks.
  - (b) The notice shall:
    - (i) state that an application has been made; and
    - (ii) specify where the interested party may obtain additional information relating to the application.
  - (c) Clerical errors, ambiguities, and mistakes that do not prejudice the rights of others may be corrected by order of the state engineer either before or after the publication of notice.
- (2) After publication of notice to water users, the state engineer may authorize amendments or corrections that involve a change of point of diversion, place, or purpose of use of water, only after republication of notice to water users.

Amended by Chapter 388, 2009 General Session

**73-3-7 Protests.**

- (1) Any person interested may file a protest with the state engineer:
  - (a) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
  - (b) within 30 days after the notice is published, if the adjudicative proceeding is formal.
- (2) The state engineer shall consider the protest and shall approve or reject the application.

Amended by Chapter 19, 1995 General Session

**73-3-8 Approval or rejection of application -- Requirements for approval -- Application for specified period of time -- Filing of royalty contract for removal of salt or minerals.**

- (1)
  - (a) It shall be the duty of the state engineer to approve an application if:
    - (i) there is unappropriated water in the proposed source;
    - (ii) the proposed use will not impair existing rights or interfere with the more beneficial use of the water;
    - (iii) the proposed plan is physically and economically feasible, unless the application is filed by the United States Bureau of Reclamation, and would not prove detrimental to the public welfare;
    - (iv) the applicant has the financial ability to complete the proposed works; and
    - (v) the application was filed in good faith and not for purposes of speculation or monopoly.
  - (b)
    - (i) If the state engineer, because of information in the state engineer's possession obtained either by the state engineer's own investigation or otherwise, has reason to believe that an application to appropriate water will interfere with its more beneficial use for irrigation, domestic or culinary, stock watering, power or mining development, or manufacturing, or will unreasonably affect public recreation or the natural stream environment, or will prove

detrimental to the public welfare, it is the state engineer's duty to withhold approval or rejection of the application until the state engineer has investigated the matter.

(ii) If an application does not meet the requirements of this section, it shall be rejected.

- (2)
  - (a) An application to appropriate water for industrial, power, mining development, manufacturing purposes, agriculture, or municipal purposes may be approved for a specific and certain period from the time the water is placed to beneficial use under the application, but in no event may an application be granted for a period of time less than that ordinarily needed to satisfy the essential and primary purpose of the application or until the water is no longer available as determined by the state engineer.
  - (b) At the expiration of the period fixed by the state engineer the water shall revert to the public and is subject to appropriation as provided by this title.
  - (c) No later than 60 calendar days before the expiration date of the fixed time period, the state engineer shall send notice by mail or by any form of electronic communication through which receipt is verifiable, to the applicant of record.
  - (d) Except as provided by Subsection (2)(e), the state engineer may extend any limited water right upon a showing that:
    - (i) the essential purpose of the original application has not been satisfied;
    - (ii) the need for an extension is not the result of any default or neglect by the applicant; and
    - (iii) the water is still available.
  - (e) No extension shall exceed the time necessary to satisfy the primary purpose of the original application.
  - (f) A request for extension of the fixed time period must be filed in writing in the office of the state engineer on or before the expiration date of the application.
- (3)
  - (a) Before the approval of any application for the appropriation of water from navigable lakes or streams of the state that contemplates the recovery of salts and other minerals therefrom by precipitation or otherwise, the applicant shall file with the state engineer a copy of a contract for the payment of royalties to the state.
  - (b) The approval of an application shall be revoked in the event of the failure of the applicant to comply with terms of the royalty contract.

Amended by Chapter 136, 2007 General Session

### **73-3-10 Approval or rejection of application.**

- (1) When the state engineer approves or rejects an application, the state engineer shall record the approval decision or rejection decision in the state engineer's office.
- (2) On the same day on which the state engineer makes an approval decision or rejection decision described in Subsection (1), the state engineer shall mail the decision to the applicant.
- (3) If an application is approved, the applicant may, upon receipt of the approval decision:
  - (a) proceed with the construction of the necessary works;
  - (b) take any steps required to apply the water to the use described in the application; and
  - (c) perfect the proposed application.
- (4) If the application is rejected, the applicant may not take steps toward the prosecution of:
  - (a) the work proposed in the application; or
  - (b) the proposed diversion and use of the public water in the application.
- (5) In a decision approving an application, other than an application for a fixed time period, the state engineer shall state the time within which:

- (a) the construction work must be completed; and
- (b) the water must be applied to beneficial use.

Amended by Chapter 429, 2013 General Session

**73-3-11 Statement of financial ability of applicants.**

Before either approving or rejecting an application the state engineer may require such additional information as will enable him properly to guard the public interests, and may require a statement of the following facts: In case of an incorporated company, he may require the submission of the articles of incorporation, the names and places of residence of its directors and officers, and the amount of its authorized and its paid-up capital. If the applicant is not a corporation, he may require a showing as to the names of the persons proposing to make the appropriation and a showing of facts necessary to enable him to determine whether or not they are qualified appropriators and have the financial ability to carry out the proposed work, and whether or not the application has been made in good faith.

No Change Since 1953

**73-3-12 Time limit on construction and application to beneficial use -- Extensions -- Procedures and criteria.**

- (1) As used in this section:
  - (a) "Public water supplier" is as defined in Section 73-1-4.
  - (b) "Wholesale electrical cooperative" is as defined in Section 54-2-1.
- (2)
  - (a) Within the time set by the state engineer under Subsection 73-3-10(5), an applicant shall:
    - (i) construct works, if necessary;
    - (ii) apply the water to beneficial use; and
    - (iii) file proof with the state engineer in accordance with Section 73-3-16.
  - (b) Except as provided by Subsection (4), the state engineer shall extend the time in which an applicant shall comply with Subsection (2)(a) if:
    - (i) the date set by the state engineer is not after 50 years from the day on which the application is approved; and
    - (ii) the applicant shows:
      - (A) reasonable and due diligence in completing the appropriation; or
      - (B) a reasonable cause for delay in completing the appropriation.
  - (c) An applicant shall file a request for an extension of time with the state engineer on or before the date set for filing proof.
  - (d) The state engineer may grant an extension of time authorized by Subsection (2)(b) if the state engineer sets a date:
    - (i) no later than 14 years from the day on which the application is approved if the applicant meets the requirements of Subsection (2)(b); and
    - (ii) after 14 years from the day on which the application is approved if:
      - (A) the applicant meets the requirements of Subsection (2)(b); and
      - (B) the state engineer publishes notice as provided in Subsection (2)(e).
  - (e)
    - (i) The state engineer shall publish a notice of the request for an extension of time:
      - (A) once a week for two successive weeks, in a newspaper of general circulation, in the county:

- (I) in which the water source is located; and
  - (II) where the water will be used; and
- (B) in accordance with Section 45-1-101 for two weeks.
- (ii) The notice shall:
  - (A) state that a request for an extension of time has been made; and
  - (B) specify where an interested party may obtain additional information relating to the request.
- (f) A person who owns a water right or holds an application from the water source referred to in Subsection (2)(e) may file a protest with the state engineer:
  - (i) within 20 days after the notice is published, if the adjudicative proceeding is informal; and
  - (ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.
- (g) The approved extension of time is effective so long as the applicant continues to exercise reasonable and due diligence in completing the appropriation.
- (h) The state engineer shall consider the holding of an approved application by a public water supplier or a wholesale electrical cooperative to meet the reasonable future water or electricity requirements of the public to be reasonable and due diligence in completing the appropriation for the purposes of this section for 50 years from the date on which the application is approved.
- (i) If the state engineer finds unreasonable delay or lack of reasonable and due diligence in completing the appropriation, the state engineer may:
  - (i) deny the extension of time; or
  - (ii) grant the request in part or upon conditions, including a reduction of the priority of all or part of the application.
- (3) Except as provided by Subsection (4), an application upon which proof has not been filed shall lapse and have no further force or effect after 50 years from the date on which the application is approved.
- (4)
  - (a) If the works are constructed with which to make beneficial use of the water applied for, the state engineer may, upon showing of that fact, extend the time in which to file proof by setting a date after 50 years from the day on which the application is approved.
  - (b)
    - (i) The state engineer may extend the time in which the applicant shall comply with Subsection (2)(a) by setting a date after 50 years from the day on which the application is approved if the applicant:
      - (A) is a public water supplier or a wholesale electrical cooperative; and
      - (B) provides information that shows the water applied for in the application is needed to meet the reasonable future requirements of the public.
    - (ii) The information provided by a public water supplier shall be in accordance with the criteria listed in Subsection 73-1-4(2)(f).
    - (iii) A wholesale electrical cooperative shall provide the information described in Subsection (4)(b)(i)(B) in a report that forecasts:
      - (A) the need for the water to produce power; and
      - (B) the power output of the project for the wholesale electrical cooperative within the next 40 years.
  - (c) The state engineer shall extend the time in which to file proof by setting a reasonable date after 50 years from the day on which the application is approved if the applicant:
    - (i) meets the requirements in Subsection (4)(b); and
    - (ii) has:
      - (A) constructed works to apply the water to beneficial use; or

(B) made substantial expenditures to construct the works.

Amended by Chapter 221, 2013 General Session

**73-3-13 Protests -- Procedure.**

- (1) Any other applicant, or any user of water from any river system or water source may file a request for agency action with the state engineer alleging that such work is not being diligently prosecuted to completion.
- (2) Upon receipt of the request for agency action, the state engineer shall give the applicant notice and hold an adjudicative proceeding.
- (3) If diligence is not shown by the applicant, the state engineer may declare the application and all rights under it forfeited.

Amended by Chapter 161, 1987 General Session

**73-3-14 Judicial review of state engineer order.**

- (1)
  - (a) A person aggrieved by an order of the state engineer may obtain judicial review in accordance with Title 63G, Chapter 4, Administrative Procedures Act, and this section.
  - (b) Venue for judicial review of an informal adjudicative proceeding is in the county in which the water source or a portion of the water source is located.
- (2) The state engineer shall be joined as a respondent in a petition to review the state engineer's decision, but no judgment for costs or expenses of the litigation may be rendered against the state engineer.
- (3) A person who files a petition for judicial review as authorized in this section shall:
  - (a) name the state engineer as a respondent; and
  - (b) provide written notice in accordance with Subsection (5) to each person who filed a protest in accordance with Section 73-3-7 of:
    - (i) the filing of the petition for judicial review; and
    - (ii) the opportunity to intervene in accordance with Utah Rules of Civil Procedure, Rule 24.
- (4) In addition to the requirements of Subsection (3), a protestant in the adjudicative proceeding who files a petition for judicial review shall also name as a respondent the person:
  - (a) who requested the adjudicative proceeding; or
  - (b) against whom the state engineer brought the adjudicative proceeding.
- (5) The written notice required by this section shall:
  - (a) be mailed:
    - (i) within the time provided for by Utah Rules of Civil Procedure, Rule 4(b); and
    - (ii) to the address on record with the state engineer's office at the time the order is issued; and
  - (b) include:
    - (i) a copy of the petition; and
    - (ii) the address of the court in which the petition is pending.
- (6) If a person who files a petition for judicial review fails to provide notice as required by this section, the court shall dismiss the petition without prejudice upon:
  - (a) the motion of a party;
  - (b) the special appearance of a person who:
    - (i) participated in the adjudicative proceeding; and
    - (ii) is not a party; or
  - (c) the court's own motion.

- (7) A person who files a petition for judicial review is not required to:
- (a) notwithstanding Subsection 63G-4-401(3)(b), name a respondent that is not required by this section; and
  - (b) notwithstanding Subsection 63G-4-402(2)(a)(iv), identify all parties to the adjudicative proceeding.

Amended by Chapter 165, 2008 General Session

Amended by Chapter 382, 2008 General Session

**73-3-15 Dismissal of action for review of informal adjudicative proceedings.**

- (1) An action to review a decision of the state engineer from an informal adjudicative proceeding may be dismissed upon the application of any of the parties upon the grounds provided in Utah Rules of Civil Procedure, Rule 41 for:
- (a) the dismissal of actions generally; and
  - (b) failure to prosecute the action with diligence.
- (2) For the purpose of this section, failure to prosecute a suit to trial within two years after it is filed gives rise to a rebuttable presumption of a lack of diligence.
- (3) In evaluating the rebuttable presumption, the court shall consider the totality of the circumstances.

Amended by Chapter 248, 2009 General Session

**73-3-16 Proof of appropriation or permanent change -- Notice -- Manner of proof -- Statements -- Maps, profiles, and drawings -- Verification -- Waiver of filing -- Statement in lieu of proof of appropriation or change.**

- (1) Sixty days before the date set for the proof of appropriation or proof of change to be made, the state engineer shall notify the applicant by mail when proof of completion of the works and application of the water to a beneficial use is due.
- (2) On or before the date set for completing the proof in accordance with the application, the applicant shall file proof with the state engineer on forms furnished by the state engineer.
- (3) Except as provided in Subsection (4), the applicant shall submit the following information:
- (a) a description of the works constructed;
  - (b) the quantity of water in acre-feet or the flow in second-feet diverted, or both;
  - (c) the method of applying the water to beneficial use; and
  - (d)
    - (i) detailed measurements of water put to beneficial use;
    - (ii) the date the measurements were made; and
    - (iii) the name of the person making the measurements.
- (4)
- (a)
    - (i) On applications filed for appropriation or permanent change of use of water to provide a water supply for state projects constructed pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources, or for federal projects constructed by the United States Bureau of Reclamation for the use and benefit of the state, any of its agencies, its political subdivisions, public and quasi-municipal corporations, or water users' associations of which the state, its agencies, political subdivisions, or public and quasi-municipal corporations are stockholders, the proof shall include:
      - (A) a statement indicating construction of the project works has been completed;

- (B) a description of the major features with appropriate maps, profiles, drawings, and reservoir area-capacity curves;
  - (C) a description of the point or points of diversion and redirection;
  - (D) project operation data;
  - (E) a map showing the place of use of water and a statement of the purpose and method of use;
  - (F) the project plan for beneficial use of water under the applications and the quantity of water required; and
  - (G) a statement indicating what type of measuring devices have been installed.
- (ii) The director of the Division of Water Resources shall sign proofs for the state projects and an authorized official of the Bureau of Reclamation shall sign proofs for the federal projects specified in Subsection (4)(a).
- (b) Proof on an application for appropriation or permanent change for a surface storage facility in excess of 1,000 acre-feet constructed by a public water supplier to provide a water supply for the reasonable requirements of the public shall include:
- (i) a description of the completed water storage facility;
  - (ii) a description of the major project features and appropriate maps, profiles, drawings, and reservoir area-capacity curves as required by the state engineer;
  - (iii) the quantity of water stored in acre-feet;
  - (iv) a description of the water distribution facility for the delivery of the water; and
  - (v) the project plan for beneficial use of water including any existing contracts for water delivery.
- (5) The proof on all applications shall be sworn to by the applicant or the applicant's appointed representative.
- (6)
- (a) Except as provided in Subsection (6)(b), when filing proof, the applicant shall submit maps, profiles, and drawings made by a Utah licensed land surveyor or Utah licensed professional engineer that show:
    - (i) the location of the completed works;
    - (ii) the nature and extent of the completed works;
    - (iii) the natural stream or source from which and the point where the water is diverted and, in the case of a nonconsumptive use, the point where the water is returned; and
    - (iv) the place of use.
  - (b) The state engineer may waive the filing of maps, profiles, and drawings if in the state engineer's opinion the written proof adequately describes the works and the nature and extent of beneficial use.
- (7) In those areas in which general determination proceedings are pending, or have been concluded, under Title 73, Chapter 4, Determination of Water Rights, the state engineer may petition the district court for permission to:
- (a) waive the requirements of this section and Section 73-3-17; and
  - (b) permit each owner of an application to file a verified statement to the effect that the applicant has completed the appropriation or change and elects to file a statement of water users claim in the proposed determination of water rights or any supplement to it in accordance with Title 73, Chapter 4, Determination of Water Rights, in lieu of proof of appropriation or proof of change.
- (8) This section does not apply to an instream flow water right authorized by Section 73-3-30.

Amended by Chapter 221, 2013 General Session

### **73-3-17 Certificate of appropriation -- Evidence.**

- (1) Upon the satisfaction of the state engineer that an appropriation, a permanent change of point of diversion, place or purpose of use, or a fixed time change authorized by Section 73-3-30 has been perfected in accordance with the application, and that the water appropriated or affected by the change has been put to a beneficial use, as required by Section 73-3-16 or 73-3-30, the state engineer shall issue a certificate, in duplicate, setting forth:
  - (a) the name and post-office address of the person by whom the water is used;
  - (b) the quantity of water in acre-feet or the flow in second-feet appropriated;
  - (c) the purpose for which the water is used;
  - (d) the time during which the water is to be used each year;
  - (e) the name of the stream or water source:
    - (i) from which the water is diverted; or
    - (ii) within which an instream flow is maintained;
  - (f) the date of the appropriation or change; and
  - (g) other information that defines the extent and conditions of actual application of the water to a beneficial use.
- (2) A certificate issued on an application for one of the following types of projects need show no more than the facts shown in the proof submitted under Section 73-3-16:
  - (a) a project constructed according to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources;
  - (b) a federal project constructed by the United States Bureau of Reclamation, referred to in Section 73-3-16; and
  - (c) a surface water storage facility in excess of 1,000 acre-feet constructed by a public water supplier.
- (3) A certificate under this section does not extend the rights described in the application.
- (4) Failure to file proof of appropriation or proof of change of the water on or before the date set therefor causes the application to lapse.
- (5) One copy of a certificate issued under this section shall be filed in the office of the state engineer and the other shall be delivered to the appropriator or to the person making the change who may record the certificate in the office of the county recorder of the county in which the water is diverted from the natural stream or source.
- (6) The certificate issued under this section is prima facie evidence of the owner's right to use the water in the quantity, for the purpose, at the place, and during the time specified therein, subject to prior rights.

Amended by Chapter 128, 2011 General Session

### **73-3-18 Lapse of application -- Notice -- Reinstatement -- Priorities -- Assignment of application -- Filing and recording -- Constructive notice -- Effect of failure to record.**

- (1) If an application lapses for failure of the applicant to comply with a provision of this title or an order of the state engineer, the state engineer shall promptly give notice of the lapse to the applicant by regular mail.
- (2) Within 60 days after notice of a lapse described in Subsection (1), the state engineer may, upon a showing of reasonable cause, reinstate the application with the date of priority changed to the date of reinstatement.
- (3) The original priority date of a lapsed application may not be reinstated, except upon a showing of fraud or mistake of the state engineer.



- (4) Except as provided in Section 73-3-5.6, Section 73-3-12, Section 73-3-20, or Subsection (2), the priority of an application is determined by the day on which the state engineer's office receives the written application.
- (5) Before the state engineer issues a certificate of appropriation, a right claimed under an application for the appropriation of water may be transferred or assigned by a written instrument.
- (6) An instrument transferring or assigning a right described in Subsection (5) shall be recorded in the office of the applicable county recorder to provide notice of the instrument's contents.
- (7) An instrument described in Subsection (6) that is not recorded as described in Subsection (6) is void against any subsequent assignee in good faith and for valuable consideration of the same application or any portion of the same application, if the subsequent assignee's own assignment is recorded as described in Subsection (6) first.

Amended by Chapter 369, 2014 General Session

**73-3-19 Right of entry on private property -- By applicant -- Bond -- Priority.**

Whenever any applicant for the use of water from any stream or water source must necessarily enter upon private property in order to make a survey to secure the required information for making a water filing and is refused by the owner or possessor of such property such right of entry, he may petition the district court for an order granting such right, and after notice and hearing, such court may grant such permission, on security being given to pay all damage caused thereby to the owner of such property. In such case the priority of such application shall date from the filing of such petition with the district court as aforesaid.

No Change Since 1953

**73-3-20 Right to divert appropriated waters into natural streams -- Requirements -- Storage in reservoir -- Information required by state engineer -- Lapse of application.**

- (1) Upon application in writing and approval of the state engineer, any appropriated water may, for the purpose of preventing waste and facilitating distribution, be turned from the channel of any stream or any lake or other body of water, into the channel of any natural stream or natural body of water or into a reservoir constructed across the bed of any natural stream, and commingled with its waters, and a like quantity less the quantity lost by evaporation and seepage may be taken out, either above or below the point where emptied into the stream, body of water or reservoir. In so doing, the original water in such stream, body of water, or reservoir must not be deteriorated in quality or diminished in quantity for the purpose used, and the additional water turned in shall bear its share of the expense of maintenance of such reservoir and an equitable proportion of the cost of the reservoir site and its construction. Any person having stored that person's appropriated water in a reservoir for a beneficial purpose shall be permitted to withdraw the water at the times and in the quantities as the person's necessities may require if the withdrawal does not interfere with the rights of others.
- (2)
  - (a) The state engineer may require an owner of an approved exchange application to provide:
    - (i) information about the diverting works constructed;
    - (ii) information about the extent to which the development under the exchange has occurred; or
    - (iii) other information the state engineer considers necessary to:
      - (A) ensure that the exchange is taking place;

- (B) establish that the owner still has a legal interest in the underlying water right used as the basis for the exchange; or
- (C) determine the quantity of water being exchanged.
- (b) The owner of an exchange application shall provide the information requested by the state engineer within 60 days after the day on which the owner received the notification from the state engineer.
- (3) The state engineer may lapse an approved exchange application described in Subsection (1) if:
  - (a) the applicant has lost a legal interest in the underlying right used to facilitate the exchange;
  - (b) the exchange can no longer be carried out as stated in the application;
  - (c) the applicant has not complied with the conditions established in approving the exchange; or
  - (d) the applicant fails to provide the information requested by the state engineer under Subsection (2).
- (4)
  - (a) Notwithstanding Section 73-3-18, the state engineer may reinstate an exchange application that was lapsed by the state engineer under Subsection (3), if:
    - (i) the applicant files with the state engineer a written request to reinstate the exchange application;
    - (ii) the exchange application is for a small amount of water, as defined in Section 73-3-5.6;
    - (iii) the applicant demonstrates that, before the exchange application lapsed, the applicant or the applicant's predecessor in interest, in accordance with the exchange application:
      - (A) constructed and occupied a residence; and
      - (B) beneficially used the water at the residence; and
    - (iv) the applicant demonstrates that none of the conditions described in Subsection (3) for lapsing an approved exchange application still exist.
  - (b) The priority of an exchange application reinstated under this section shall be the day on which the applicant files a request to reinstate an exchange application that was lapsed by the state engineer.

Amended by Chapter 429, 2013 General Session

### **73-3-21.1 Priorities between appropriators.**

- (1) As used in this section:
  - (a) "Military facility" means an installation, base, air field, camp, post, station, yard, center, or other facility owned, leased, or operated by, or under the jurisdiction of, the United States Department of Defense or the National Guard.
  - (b) "Temporary water shortage emergency" means a shortage of water:
    - (i) whether caused by drought, manmade, or naturally caused;
    - (ii) for which the governor has declared an emergency; and
    - (iii) that may not exceed in duration more than two consecutive calendar years.
- (2)
  - (a) Appropriators shall have priority among themselves according to the dates of their respective appropriations, so that each appropriator is entitled to receive the appropriator's whole supply before any subsequent appropriator has any right.
  - (b) Notwithstanding Subsection (2)(a), if there is a temporary water shortage emergency, the use of water for drinking, sanitation, and fire suppression has a preferential right over any other water right for the duration of the temporary water shortage emergency if:
    - (i) the water is used by:
      - (A) an individual water user;

- (B) a county or municipality;
- (C) a public water supplier, as defined in Section 73-1-4; or
- (D) a military facility that was in operation on March 10, 2011; and
- (ii) the water is used without unnecessary waste.
- (c) Notwithstanding Subsection (2)(a), if there is a temporary water shortage emergency, the use of water for agricultural purposes, including irrigation and livestock water, has a preferential right over any other right, except as provided in Subsection (2)(b).
- (3) A person using water preferentially during a temporary water shortage emergency shall pay annually to the appropriator whose water use is interrupted the reasonable value of the water use interrupted, crop losses, and other consequential damages incurred as a result of the interruption.

Amended by Chapter 201, 2011 General Session

### **73-3-23 Replacement of water.**

In all cases of appropriations of underground water the right of replacement is hereby granted to any junior appropriator whose appropriation may diminish the quantity or injuriously affect the quality of appropriated underground water in which the right to the use thereof has been established as provided by law. No replacement may be made until application in writing has been made to and approved by the state engineer. In all cases replacement shall be at the sole cost and expense of the applicant and subject to such rules and regulations as the state engineer may prescribe. The right of eminent domain is hereby granted to any applicant for the purpose of replacement as provided herein.

No Change Since 1953

### **73-3-25 Well driller's license -- Enforcement.**

- (1) As used in this section:
  - (a) "Well" means an open or cased excavation or borehole for diverting, using, or monitoring underground water made by any construction method.
  - (b) "Well driller" means a person with a license to engage in well drilling for compensation or otherwise.
  - (c) "Well drilling" means the act of:
    - (i) drilling, constructing, repairing, renovating, deepening, cleaning, developing, or abandoning a well; or
    - (ii) installing or repairing a pump in a well.
- (2)
  - (a) Notwithstanding Subsection (3), a person who installs or repairs a pump in a well on the person's own property for the person's own use is not required to obtain a license under this section.
  - (b) Except as provided in Subsection (2)(c), a person who installs or repairs a pump in a well for compensation:
    - (i) shall obtain a license as required by Subsection (3); and
    - (ii) is subject to all of this section's provisions.
  - (c) Notwithstanding the requirements of Subsection (2)(b), a person who performs electrical repairs on a pump in a well is not required to obtain a license as required by Subsection (3).
- (3)
  - (a)

- (i) A person shall obtain a license as provided in this section before engaging in well drilling.
  - (ii) The state engineer may enforce Subsection (3)(a)(i) in accordance with Sections 73-2-25 and 73-2-26.
- (b) A person applying for a well driller license shall file a well driller bond:
  - (i) with the state engineer; and
  - (ii) payable to the Division of Water Rights.
- (c)
  - (i) Compliance with this section and the rules authorized by this section is required to obtain or renew a well driller license.
  - (ii) The state engineer may refuse to issue a license if it appears an applicant violates a rule authorized by this section.
- (d) A well driller license is not transferable.
- (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer may make rules establishing:
  - (a) the amount, form, and general administrative requirements of a well driller bond;
  - (b) the amount of a well driller fine;
  - (c) minimum well drilling standards;
  - (d) well driller reporting requirements;
  - (e) the requirements for obtaining a well driller license, including:
    - (i) a well driller license application form;
    - (ii) the license expiration date; and
    - (iii) the license renewal cycle; and
  - (f) a procedure to enforce a well drilling standard or other well drilling requirement.
- (5)
  - (a) A well driller shall submit a report to the state engineer:
    - (i) containing data relating to each well;
    - (ii) within 30 days after the completion or abandonment of the well drilling;
    - (iii) on forms furnished by the state engineer; and
    - (iv) containing information required by the state engineer.
  - (b) In accordance with Sections 73-2-25 and 73-2-26, the state engineer may commence an enforcement action against a person who fails to submit a report required by Subsection (5)
    - (a) within 90 days of the day on which the well driller license lapses.
- (6)
  - (a) A well driller shall comply with the rules authorized by this section.
  - (b) If the state engineer determines that a well driller has failed to comply with a rule, the state engineer may, in accordance with the procedures established in rule:
    - (i)
      - (A) order that a well driller pay a fine; or
      - (B) revoke or suspend the well driller's license; and
    - (ii) exact the bond.
- (7)
  - (a) The state engineer shall retain the money from a fine or exacting a bond as a dedicated credit.
  - (b) The state engineer may expend:
    - (i) money retained from a fine for:
      - (A) well drilling inspection;
      - (B) well drilling enforcement; or
      - (C) well driller education; and

- (ii) money retained from exacting a bond to investigate or correct a deficiency by a well driller that could adversely affect the public interest resulting from noncompliance with a rule authorized by this section.

Amended by Chapter 124, 2010 General Session

**73-3-26 Violations -- Penalty.**

- (1) A person engaged in well drilling, as described in Subsection 73-3-25(1)(c), is guilty of a crime punishable under Section 73-2-27 if the person does not have a current license to engage in well drilling, as provided by this title.
- (2) Each day that a violation under Subsection (1) continues is a separate offense.

Amended by Chapter 369, 2014 General Session

**73-3-27 Requests for segregation or consolidation.**

- (1)
  - (a) Upon written request, the state engineer shall segregate into two or more parts the following in the state engineer's records:
    - (i) an application to:
      - (A) under Section 73-3-2, appropriate water;
      - (B) under Section 73-3-3, permanently change:
        - (I) the point of diversion;
        - (II) the place of water use; or
        - (III) the purpose of water use; and
    - (ii) a water right for which:
      - (A) the state engineer has issued a certificate according to Section 73-3-17;
      - (B) a court has entered a judgment according to Section 73-4-15; and
      - (C) a person has filed a claim according to Section 73-5-13.
  - (b) A person shall:
    - (i) submit the request authorized by Subsection (1)(a) on a form furnished by the state engineer; and
    - (ii) include:
      - (A) the water right number to be segregated;
      - (B) the name and post-office address of the owner of the application or water right;
      - (C) a statement of the nature of the proposed segregation;
      - (D) the reasons for the proposed segregation; and
      - (E) other information the state engineer may require to accomplish the segregation.
- (2)
  - (a) An action taken by the state engineer on an application or water right before segregation is applicable in all respects to the segregated parts of the application or water right.
  - (b) After the state engineer segregates the application or water right, each segregated part is a separate application or water right in the state engineer's records.
  - (c) The segregation of an application or a water right in the state engineer's records does not:
    - (i) confirm the validity or good standing of the segregated parts of the application or water right; or
    - (ii) extend the time for the construction of works for an application.
- (3) Upon written request, the state engineer may consolidate two or more applications or water rights if the applications or water rights:

- (a) are from the same source;
- (b) have the same priority date; and
- (c) are sufficiently consistent in definition that the consolidated application or water right may be described without referring to the characteristics of the individual application or water right that existed before consolidation.

Amended by Chapter 247, 2009 General Session

**73-3-28 Replacement wells -- Requirements -- State engineer's approval -- Application to drill -- Filing -- Form -- Contents -- Notice -- Fees -- Definition -- Plugging of old well.**

An existing well may be replaced with a replacement well within a radius of 150 feet from the existing well without the filing of a change application under Section 73-3-3, upon approval first having been obtained from the state engineer.

Such request for permission to drill a replacement well shall be filed with the state engineer upon a form to be furnished by the state engineer. Such form shall contain, but need not be limited to, the name and post office address of the person, corporation or association making the request. The number of the claim or application filed with the state engineer covering the well which is being replaced, the number of the award if in a decree, the reason for the replacement, the location of the replacement well with reference to the nearest United States land survey corner, and from the old well, and the name of the driller employed by the applicant to do the work.

No filing fee shall be required for the filing of such a request for permission to drill a replacement well and the state engineer need give only such notice as, in his judgment, is necessary to protect existing rights and in the event the state engineer shall determine that it is necessary to publish notice the advertising fee shall be paid in advance by the applicant.

The term "replacement well" as used herein means a new well drilled for the sole purpose of replacing an existing well which is impaired or made useless by structural difficulties and no new right in the use of water accrues. Upon completion of the new well the old well must be plugged by the applicant in a manner satisfactory to the state engineer.

Amended by Chapter 136, 2001 General Session

**73-3-29 Relocation of natural streams -- Written permit required -- Emergency work -- Violations.**

- (1) Except as provided in Subsection (2), a state agency, county, city, corporation, or person may not relocate any natural stream channel or alter the beds and banks of any natural stream without first obtaining the written approval of the state engineer.
- (2)
  - (a) The state engineer may issue an emergency permit or order to relocate a natural stream channel or alter the beds and banks of a natural stream as provided by this Subsection (2) and Section 63G-4-502.
  - (b) Subject to the requirements of this section, a person may take steps reasonably necessary to alleviate or mitigate a threat before a written permit is issued if an emergency situation arises which involves:
    - (i) immediate or actual flooding; or
    - (ii) threatens the health or well-being of a person.
  - (c)
    - (i) If a threat described in Subsection (2)(b) occurs during normal working hours, the state engineer or the state engineer's representative must be notified immediately of the

- threat. After receiving notification of the threat, the state engineer or the state engineer's representative may orally approve action to alleviate or mitigate the threat.
- (ii) If a threat described in Subsection (2)(b) does not occur during normal working hours, action may be taken to alleviate or mitigate the threat and the state engineer or the state engineer's representative shall be notified of the action taken on the first working day following the action.
  - (d) A written application outlining the action taken or the action proposed to be taken to alleviate or mitigate a threat described in Subsection (2)(b) shall be submitted to the state engineer within two working days following notification of the threat to the state engineer or the state engineer's representative.
  - (e)
    - (i) The state engineer shall inspect in a timely manner the site where the emergency action was taken.
    - (ii) After inspection, the state engineer may impose additional requirements, including mitigation measures.
  - (f) Adjudicative proceedings following the emergency work shall be informal unless otherwise designated by the state engineer.
- (3) An application to relocate any natural stream channel or alter the beds and banks of any natural stream shall be in writing and shall contain the following:
- (a) the name and address of the applicant;
  - (b) a complete and detailed statement of the location, nature, and type of relocation or alteration;
  - (c) the methods of construction;
  - (d) the purposes of the application; and
  - (e) any additional information that the state engineer considers necessary, including plans and specifications for the construction of works.
- (4)
- (a) The state engineer shall, without undue delay, conduct investigations that may be reasonably necessary to determine whether the relocation or alteration will:
    - (i) impair vested water rights;
    - (ii) unreasonably or unnecessarily affect a recreational use or the natural stream environment;
    - (iii) unreasonably or unnecessarily endanger aquatic wildlife; or
    - (iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.
  - (b) The state engineer shall approve the application unless the relocation or alteration will:
    - (i) impair vested water rights;
    - (ii) unreasonably or unnecessarily adversely affect a public recreational use or the natural stream environment;
    - (iii) unreasonably or unnecessarily endanger aquatic wildlife; or
    - (iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct high flows.
  - (c) The state engineer may approve the application, in whole or in part, with any reasonable terms to protect vested water rights, a public recreational use, the natural stream environment, or aquatic wildlife.
- (5) No cost incurred by the applicant, including any cost incurred to comply with the terms imposed by the state engineer, is reimbursable by the Division of Water Rights.
- (6) Except as provided in Subsection (2), a person who knowingly or intentionally relocates a natural stream channel, or alters the bed or bank of a natural stream channel without first obtaining the written approval of the state engineer is guilty of a crime punishable under Section 73-2-27.

- (7) The state engineer may issue an order for the repair and restoration of the bed and banks of a natural stream channel altered contrary to, or without, a permit issued for that purpose.

Amended by Chapter 369, 2014 General Session

**73-3-30 Change application for an instream flow.**

(1) As used in this section:

- (a) "Division" means the Division of Wildlife Resources, created in Section 23-14-1, or the Division of Parks and Recreation, created in Section 79-4-201.
- (b) "Fishing group" means an organization that:
  - (i) is exempt from taxation under Section 501(c)(3), Internal Revenue Code; and
  - (ii) promotes fishing opportunities in the state.
- (c) "Fixed time change" means a change in a water right's point of diversion, place of use, or purpose of use for a fixed period of time longer than one year but not longer than 10 years.

(2)

- (a) A division may file a permanent or temporary change application, as provided by Section 73-3-3, for the purpose of providing water for an instream flow, within a specified section of a natural or altered stream channel, necessary within the state for:
  - (i) the propagation of fish;
  - (ii) public recreation; or
  - (iii) the reasonable preservation or enhancement of the natural stream environment.
- (b) A division may file a change application on:
  - (i) a perfected water right:
    - (A) presently owned by the division;
    - (B) purchased by the division for the purpose of providing water for an instream flow, through funding provided for that purpose by legislative appropriation; or
    - (C) acquired by lease, agreement, gift, exchange, or contribution; or
  - (ii) an appurtenant water right acquired with the acquisition of real property by the division.
- (c) A division may:
  - (i) purchase a water right for the purposes provided in Subsection (2)(a) only with funds specifically appropriated by the Legislature for water rights purchases; or
  - (ii) accept a donated water right without legislative approval.
- (d) A division may not acquire water rights by eminent domain for an instream flow or for any other purpose.

(3)

- (a) A fishing group may file a fixed time change application on a perfected, consumptive water right for the purpose of providing water for an instream flow, within a specified section of a natural or altered stream channel, to protect or restore habitat for three native trout:
  - (i) the Bonneville cutthroat;
  - (ii) the Colorado River cutthroat; or
  - (iii) the Yellowstone cutthroat.
- (b) Before filing an application authorized by Subsection (3)(a) to change a shareholder's proportionate share of water, the water company shall submit the decision to approve or deny the change request required by Subsection 73-3-3.5(3) to a vote of the shareholders:
  - (i) in a manner outlined in the water company's articles of incorporation or bylaws;
  - (ii) at an annual or regular meeting described in Section 16-6a-701; or
  - (iii) at a special meeting convened under Section 16-6a-702.



- (c) The specified section of the natural or altered stream channel for the instream flow may not be further upstream than the water right's original point of diversion nor extend further downstream than the next physical point of diversion made by another person.
- (d) The fishing group shall receive the Division of Wildlife Resources' director's approval of the proposed change before filing the fixed time change application with the state engineer.
- (e) The director of the Division of Wildlife Resources may approve a proposed change if:
  - (i) the specified section of the stream channel is historic or current habitat for a species listed in Subsections (3)(a)(i) through (iii);
  - (ii) the proposed purpose of use is consistent with an existing state management or recovery plan for that species; and
  - (iii) the fishing group has:
    - (A) entered into a programmatic Candidate Conservation Agreement with Assurances with the United States Fish and Wildlife Service, as authorized by 16 U.S.C. Secs. 1531(a)(5) and 1536(a)(1), that gives the water right holder the option to receive an enhancement of survival permit, as authorized by 16 U.S.C. Sec. 1539(a)(1)(A), or a certificate of inclusion, for a fixed time change application that benefits a candidate species of trout; or
    - (B) until a programmatic Candidate Conservation Agreement with Assurances described in Subsection (3)(e)(iii)(A) becomes valid and enforceable, entered into a contract with the water right holder agreeing to defend and indemnify the water right holder for liability under Section 1538(a) of the Endangered Species Act, 16 U.S.C. Secs. 1531 through 1544, for an action taken by the water right holder under the terms of the water right holder's agreement with the fishing group for a fixed time change application.
- (f) The director may deny a proposed change if the proposed change would not be in the public's interest.
- (g)
  - (i) In considering a fixed time change application, the state engineer shall follow the same procedures as provided in this title for an application to appropriate water.
  - (ii) The rights and the duties of a fixed time change applicant are the same as provided in this title for an applicant to appropriate water.
- (h) A fishing group may refile a fixed time change application by filing a written request with the state engineer no later than 60 days before the application expires.
- (i)
  - (i) The water right for which the state engineer has approved a fixed time change application will automatically revert to the point of diversion and place and purpose of use that existed before the approved fixed time change application when the fixed time change application expires or is terminated.
  - (ii) The applicant shall give written notice to the state engineer and the lessor, if applicable, if the applicant wishes to terminate a fixed time change application before the fixed time change application expires.
- (4) In addition to the requirements of Section 73-3-3, an application authorized by this section shall:
  - (a) set forth the legal description of the points on the stream channel between which the instream flow will be provided by the change application; and
  - (b) include appropriate studies, reports, or other information required by the state engineer demonstrating the necessity for the instream flow in the specified section of the stream and the projected benefits to the public resulting from the change.
- (5)
  - (a) For a permanent change application or a fixed time change application filed according to this section, 60 days before the date on which proof of change for an instream flow is due, the

state engineer shall notify the applicant by mail or by any form of communication through which receipt is verifiable of the date when proof of change is due.

- (b) Before the date when proof of change is due, the applicant must either:
  - (i) file a verified statement with the state engineer that the instream flow uses have been perfected, setting forth:
    - (A) the legal description of the points on the stream channel between which the instream flow is provided;
    - (B) detailed measurements of the flow of water in second-feet changed;
    - (C) the period of use; and
    - (D) any additional information required by the state engineer; or
  - (ii) apply for a further extension of time as provided for in Section 73-3-12.
- (c)
  - (i) Upon acceptance of the verified statement required under Subsection (5)(b)(i), the state engineer shall issue a certificate of change for instream flow use in accordance with Section 73-3-17.
  - (ii) The certificate expires at the same time the fixed time change application expires.
- (6) No person may appropriate unappropriated water under Section 73-3-2 for the purpose of providing an instream flow.
- (7) Water used in accordance with this section is considered to be beneficially used, as required by Section 73-3-1.
- (8) A physical structure or physical diversion from the stream is not required to implement a change for instream flow use.
- (9) This section does not allow enlargement of the water right that the applicant seeks to change.
- (10) A change application authorized by this section may not impair a vested water right, including a water right used to generate hydroelectric power.
- (11) The state engineer or the water commissioner shall distribute water under an approved or a certificated instream flow change application according to the change application's priority date relative to the other water rights located within the stream section specified in the change application for instream flow.
- (12) An approved fixed time change application does not create a right of access across private property or allow any infringement of a private property right.

Amended by Chapter 379, 2013 General Session

### **73-3-31 Water right for watering livestock on public land.**

- (1) As used in this section:
  - (a) "Acquire" means to gain the right to use water through obtaining:
    - (i) an approved application to appropriate water; or
    - (ii) a perfected water right.
  - (b) "Allotment" means a designated area of public land available for livestock grazing.
  - (c) "Animal unit month (AUM)" is the amount of forage needed to sustain one cow and her calf, one horse, or five sheep and goats for one month.
  - (d)
    - (i) "Beneficial user" means the person that has the right to use the grazing permit.
    - (ii) "Beneficial user" does not mean the public land agency issuing the grazing permit.
  - (e) "Grazing permit" means a document authorizing livestock to graze on an allotment.
  - (f) "Livestock" means a domestic animal raised or kept for profit or personal use.
  - (g) "Livestock watering right" means a right for:

- (i) livestock to consume water:
  - (A) directly from the water source located on public land; or
  - (B) from an impoundment located on public land into which the water is diverted; and
- (ii) associated uses of water related to the raising and care of livestock on public land.
- (h)
  - (i) "Public land" means land owned or managed by the United States or the state.
  - (ii) "Public land" does not mean land owned by:
    - (A) the Division of Wildlife Resources;
    - (B) the School and Institutional Trust Lands Administration; or
    - (C) the Division of Parks and Recreation.
  - (i) "Public land agency" means the agency that owns or manages the public land.
- (2) A public land agency may not:
  - (a) condition the issuance, renewal, amendment, or extension of any permit, approval, license, allotment, easement, right-of-way, or other land use occupancy agreement regarding livestock on the transfer of any water right directly to the public land agency;
  - (b) require any water user to apply for, or acquire a water right in the name of, the public land agency as a condition for the issuance, renewal, amendment, or extension of any permit, approval, license, allotment, easement, right-of-way, or other land use occupancy agreement regarding livestock; or
  - (c) acquire a livestock watering right if the public land agency is not a beneficial user.
- (3) The state engineer may not approve a change application under Section 73-3-3 for a livestock watering right without the consent of the beneficial user.
- (4) A beneficial user may file a nonuse application under Section 73-1-4 on a livestock watering right or a portion of a livestock watering right that the beneficial user puts to beneficial use.
- (5) A livestock watering right is appurtenant to the allotment on which the livestock is watered.
- (6)
  - (a)
    - (i) A beneficial user or a public land agency may file a request with the state engineer for a livestock water use certificate.
  - (ii) The state engineer shall:
    - (A) provide the livestock water use certificate application form on the Internet; and
    - (B) allow electronic submission of the livestock water use certificate application.
  - (b) The state engineer shall grant a livestock water use certificate to a beneficial user if the beneficial user:
    - (i) demonstrates that the beneficial user has a right to use a grazing permit for the allotment to which the livestock watering right is appurtenant; and
    - (ii) pays the fee set in accordance with Section 73-2-14.
  - (c) A livestock water use certificate is valid as long as the livestock watering right is:
    - (i) held by a beneficial user who has the right to use the grazing permit and graze livestock on the allotment;
    - (ii) put to beneficial use within a seven-year time period; or
    - (iii) subject to a nonuse application approved under Section 73-1-4.
- (7) A beneficial user may access or improve an allotment as necessary for the beneficial user to beneficially use, develop, and maintain the beneficial user's water right appurtenant to the allotment.
- (8) If a federal land management agency reduces livestock grazing AUMs on federal grazing allotments, and the reduction results in the partial forfeiture of an appropriated water right, the amount of water in question for nonuse as a livestock water right shall be held in trust by the

state engineer until such water may be appropriated for livestock watering, consistent with this act and state law.

- (9) Nothing in this section affects a livestock watering right or a livestock water use certificate held by a public land agency on May 13, 2014.

Amended by Chapter 420, 2014 General Session

## **Chapter 3a Water Exports**

### **73-3a-101 Policy statement.**

- (1) To ensure the welfare of its citizens, the state of Utah is dedicated to:
- (a) the conservation of its scarce water resources;
  - (b) providing adequate water supplies;
  - (c) ensuring that the waters of the state's streams are available to meet the state's water requirements; and
  - (d) controlling its water resources in a manner that is in the best interest of the public.
- (2) To fulfill the policy stated in Subsection (1), the state of Utah has entered into interstate compacts on several of the state's streams that flow outside the state.
- (3) The state of Utah recognizes that under certain conditions the transportation of water for use outside the state may not be contrary to:
- (a) the conservation of Utah's waters; or
  - (b) the public welfare.

Enacted by Chapter 234, 1991 General Session

### **73-3a-102 Water mixed with substances.**

For the purposes of this chapter, water mixed with substances to form a solution or slurry, for the transportation of dissolved substances or suspended solids, is not considered to have lost its character as water.

Enacted by Chapter 234, 1991 General Session

### **73-3a-103 Water exports governed by this chapter.**

This chapter governs application procedures and criteria for the approval of applications for:

- (1) the appropriation of water from sources within the state of Utah for use outside the state; and
- (2) permanent or temporary changes of point of diversion, place of use, or purpose of use of water that is:
- (a) appropriated from sources within the state of Utah; and
  - (b) used, or proposed to be used, outside the state.

Enacted by Chapter 234, 1991 General Session

### **73-3a-104 Rulemaking power of state engineer.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the state engineer may make rules necessary to administer this chapter.

Amended by Chapter 382, 2008 General Session

**73-3a-105 Procedures -- Adjudicative proceedings.**

- (1) Except where inconsistent with the provisions of this chapter, the procedures to be followed by the state engineer in processing and considering applications filed under this chapter, and the rights and duties of the applicants, are the same as the procedures, rights, and duties specified in Title 73, Chapter 3, Appropriation, relating to appropriations of water or changes in the point of diversion, place of use, or purpose of use of water.
- (2) Adjudicative proceedings relating to applications made under this chapter shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session

**73-3a-106 Application form.**

Applications for appropriations or changes referred to in Section 73-3a-103 must:

- (1) be made upon forms furnished by the state engineer; and
- (2) set forth:
  - (a) the name of the applicant;
  - (b) the description of the water right, if applicable;
  - (c) the quantity of water;
  - (d) the stream or source;
  - (e) the point on the stream or source where the water is diverted;
  - (f) the point to which it is proposed to change the diversion of the water, if applicable;
  - (g) the place, purpose, and extent of the present use, if applicable;
  - (h) the place, purpose, and extent of the proposed use;
  - (i) an agent in the state of Utah designated for reception of service of process and other legal notices; and
  - (j) any other information that the state engineer requires.

Enacted by Chapter 234, 1991 General Session

**73-3a-107 Publication of notice of application -- Corrections or amendments of applications.**

- (1)
  - (a) When an application is filed in accordance with Section 73-3a-106 and relevant provisions of Chapter 3, Appropriation, the state engineer shall publish a notice of the application:
    - (i) once a week for a period of two successive weeks in a newspaper of general circulation in the county in which the water source is located and where the water is to be used; and
    - (ii) in accordance with Section 45-1-101 for two weeks.
  - (b) The notice shall:
    - (i) state that an application has been made; and
    - (ii) specify where the interested party may obtain additional information relating to the application.
  - (c) The notice described in Subsection (1)(a)(i) may be published in more than one newspaper.
- (2) Clerical errors, ambiguities, and mistakes in the application that do not prejudice the rights of others may be corrected by order of the state engineer either before or after the publication of notice.

- (3) If amendments or corrections to the application are made that involve a change of point of diversion, place of use, or purpose of use of water, the notice must be republished.

Amended by Chapter 388, 2009 General Session

**73-3a-108 Approval of applications -- Criteria.**

- (1) The state engineer shall:
- (a) undertake an investigation of any application made under this chapter; and
  - (b) approve the application, if he finds that:
    - (i) the proposed appropriation or change:
      - (A) satisfies Section 73-3-3, 73-3-5.5, or 73-3-8, whichever is applicable;
      - (B) is consistent with Utah's reasonable water conservation policies or objectives;
      - (C) is not contrary to the public welfare; and
      - (D) does not impair the ability of the state of Utah to comply with its obligation under any interstate compact or judicial decree which apportions water among Utah and other states; and
    - (ii) the water can be transported, measured, delivered, and beneficially used in the recipient state.
- (2) In reviewing the criteria of Subsections (1)(b)(i)(B) and (1)(b)(i)(C), the state engineer shall consider the following factors:
- (a) the supply and quality of water available to the state of Utah;
  - (b) the current and reasonably anticipated water demands of the state of Utah;
  - (c) whether there are current or reasonably anticipated water shortages within Utah;
  - (d) whether the water that is the subject of the application could feasibly be used to alleviate current or reasonably anticipated water shortages within Utah;
  - (e) the alternative supply and sources of water available to the applicant in the state where the applicant intends to use the water; and
  - (f) the demands placed on the applicant's alternate water supply in the state where the applicant intends to use the water.
- (3) If any application fails to meet any criteria of Subsection (1), it shall be rejected.
- (4) The state engineer may condition any approval to ensure that the use of the water in another state:
- (a) is subject to the same laws, rules, and controls that may be imposed upon water use within the state of Utah; or
  - (b) is consistent with the terms and conditions of any applicable interstate compact to which the state of Utah is a party.

Enacted by Chapter 234, 1991 General Session

**73-3a-109 Certification of appropriation or change.**

- (1) Any person holding an application approved under this chapter shall comply with the substantive and procedural requirements of Sections 73-3-16 and 73-3-17 to obtain a certificate of appropriation or change.
- (2) Verification that the appropriation or change has been perfected and put to beneficial use may be accepted from the recipient state's equivalent to the Utah state engineer.

Enacted by Chapter 234, 1991 General Session

## **Chapter 3b**

### **Groundwater Recharge and Recovery Act**

#### **Part 1**

#### **General Provisions**

##### **73-3b-101 Short title.**

This chapter is known as the "Groundwater Recharge and Recovery Act."

Enacted by Chapter 146, 1991 General Session

##### **73-3b-102 Definitions.**

As used in this chapter:

- (1) "Artificially recharge" means to place water in an aquifer:
  - (a) by means of:
    - (i) injection;
    - (ii) surface infiltration; or
    - (iii) another method; and
  - (b) for the purposes of:
    - (i) storing the water; and
    - (ii) recovering the water.
- (2) "Division" means Division of Water Rights.
- (3) "Recharge permit" means a permit issued by the state engineer to construct and operate a recharge project.
- (4) "Recharge project" means to artificially recharge water into an aquifer.
- (5) "Recovery permit" means a permit issued by the state engineer to construct and operate a recovery project.
- (6) "Recovery project" means to withdraw from an aquifer water that has been artificially recharged pursuant to a recharge permit.

Amended by Chapter 107, 2010 General Session

##### **73-3b-103 Prohibitions.**

- (1) A person may not artificially recharge an aquifer without first obtaining a recharge permit.
- (2) A person may not recover from an aquifer water that has been artificially recharged unless the person first obtains a recovery permit.
- (3) A person holding a recharge permit or recovery permit may not operate a recharge project or recovery project in a manner that is inconsistent with the permit conditions set by the state engineer.

Amended by Chapter 107, 2010 General Session

##### **73-3b-104 Rulemaking power of state engineer.**

The state engineer may make rules to administer this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 382, 2008 General Session

**73-3b-105 Administrative procedures.**

The administrative procedures applicable to the issuance, modification, suspension, or revocation of a recharge permit or recovery permit are those set forth in Title 63G, Chapter 4, Administrative Procedures Act, and Sections 73-3-6, 73-3-7, 73-3-14, and 73-3-15.

Amended by Chapter 107, 2010 General Session

**73-3b-106 Water right for recharged water -- Change of use of recovered water.**

- (1) A person proposing to artificially recharge water into an aquifer must have:
  - (a) a valid water right for the water proposed to be recharged; or
  - (b) an agreement to use the water proposed to be recharged with a person who has a valid water right for the water proposed to be recharged.
- (2) A person who holds a recovery permit may use or exchange recovered water only in the manner in which the water was permitted to be used or exchanged before the water was artificially recharged, unless a change or exchange application is filed and approved pursuant to Section 73-3-3 or 73-3-20, as applicable.

Amended by Chapter 107, 2010 General Session

**73-3b-107 Recoverable water -- State engineer to determine.**

A person who holds a recovery permit may recover the amount of water stored by the recharge project which the state engineer determines has reached the aquifer and remains within the hydrologic area of influence.

Enacted by Chapter 146, 1991 General Session

## **Part 2**

### **Recharge and Recovery Prmits**

**73-3b-201 Application for a recharge permit -- Required information -- Filing fee.**

- (1) The application for obtaining a recharge permit shall include the following information:
  - (a) the name and mailing address of the applicant;
  - (b) the name of the groundwater basin or groundwater sub-basin in which the applicant proposes to operate the recharge project;
  - (c) the name and mailing address of the owner of the land on which the applicant proposes to operate the recharge project;
  - (d) a legal description of the location of the proposed recharge project;
  - (e) the source and annual quantity of water proposed to be artificially recharged;
  - (f) evidence of a water right or an agreement to use the water proposed to be artificially recharged;
  - (g) the quality of the water proposed to be artificially recharged and the water quality of the receiving aquifer;
  - (h) evidence that the applicant has applied for all applicable water quality permits;
  - (i) a plan of operation for the proposed recharge project, which shall include:



- (i) a description of the proposed recharge project;
  - (ii) its design capacity;
  - (iii) a detailed monitoring program; and
  - (iv) the proposed duration of the recharge project;
  - (j) a copy of a study demonstrating:
    - (i) the area of hydrologic impact of the recharge project;
    - (ii) that the recharge project is hydrologically feasible;
    - (iii) that the recharge project will not:
      - (A) cause unreasonable harm to land; or
      - (B) impair any existing water right within the area of hydrologic impact; and
    - (iv) the percentage of anticipated recoverable water;
  - (k) evidence of financial and technical capability; and
  - (l) any other information that the state engineer requires.
- (2)
- (a) A filing fee must be submitted with the application.
  - (b) The state engineer shall establish the filing fee in accordance with Section 63J-1-504.

Amended by Chapter 107, 2010 General Session

**73-3b-202 Issuance of recharge permit -- Criteria -- Conditions.**

The state engineer:

- (1) shall issue a recharge permit if:
  - (a) the applicant has:
    - (i) the technical and financial capability to construct and operate the recharge project; and
    - (ii)
      - (A) a valid water right for the use of the water proposed to be artificially recharged; or
      - (B) an agreement to use the water proposed to be artificially recharged with a person who has a valid water right for the use of the water proposed to be artificially recharged; and
  - (b) the project:
    - (i) is hydrologically feasible;
    - (ii) will not cause unreasonable harm to land;
    - (iii) will not impair any existing water right within the area of hydrologic impact; and
    - (iv) will not adversely affect the water quality of the aquifer;
- (2) shall condition any approval on acquiring the applicable water quality permits prior to construction and operation of the recharge project; and
- (3) may attach to the permit any condition the state engineer determines is appropriate.

Amended by Chapter 107, 2010 General Session

**73-3b-203 Proof of completion, certification, or lapse of recharge permit.**

- (1) Sixty days before the date on which the recharge permit will lapse under Subsection (3), the state engineer shall notify the applicant by mail when proof of completion is due.
- (2)
  - (a) Before the date on which the recharge permit will lapse under Subsection (3), the applicant shall file proof of completion with the state engineer on a form furnished by the state engineer, which shall include:
    - (i) the location and description of the recharge works constructed;

- (ii) the water source for the water artificially recharged and where the water is delivered for artificial recharge;
  - (iii) the quantity of water, in acre-feet, the flow in second-feet, or both, diverted from the water source described in Subsection (2)(a)(ii);
  - (iv) the method of artificially recharging the water; and
  - (v) any other information the state engineer requires.
- (b) The state engineer may waive the filing of a map, a profile, or drawing if in the state engineer's opinion the written proof of completion adequately describes the construction and the nature and extent of the recharge project.
- (c) The completed proof shall conform to a rule established by the state engineer.
- (3) A recharge permit will lapse if the proof of completion of the recharge project's construction is not submitted to the state engineer within five years from the date of the permit application's approval, unless:
  - (a) the applicant requests an extension of time to complete the recharge project's construction; and
  - (b) the state engineer approves the extension of time.
- (4)
  - (a) The state engineer shall issue a recharge certificate if the recharge permittee has demonstrated to the state engineer's satisfaction that:
    - (i) a recharge project is perfected in accordance with the recharge permit; and
    - (ii) the water is being artificially recharged.
  - (b) The recharge certificate shall include:
    - (i) the name and post office address of the recharge permittee;
    - (ii) the maximum quantity of water, in acre-feet or the flow in second-feet, that may be recharged;
    - (iii) the name of the water source from which the water to be artificially recharged is diverted; and
    - (iv) other information that defines the extent and conditions of the recharge permit.
  - (c) A recharge certificate issued for a recharge permit need show no more than the facts shown in the proof of completion.
  - (d)
    - (i) The state engineer shall:
      - (A) retain and file one copy of the recharge certificate; and
      - (B) deliver one copy of the recharge certificate to the recharge permittee.
    - (ii) A recharge permittee shall file the recharge certificate with the county recorder of the county in which the water is recharged.
  - (e) The recharge certificate issued and filed under this section is prima facie evidence of the permittee's right to the artificially recharged water for the purpose, at the place, and during the time specified in the recharge certificate.

Amended by Chapter 107, 2010 General Session

**73-3b-204 Application for a recovery permit -- Required information.**

- (1) A person may file a recovery permit application with a recharge permit application.
- (2) The application for obtaining a recovery permit shall include the following information:
  - (a) the name and mailing address of the applicant;
  - (b) a legal description of the location of the existing well or proposed new well from which the applicant intends to recover artificially recharged water;

- (c) a written consent from the owner of the recharge permit, if the applicant does not hold the recharge permit;
  - (d) the name and mailing address of the owner of the land from which the applicant proposes to recover artificially recharged water;
  - (e) the name or description of the artificially recharged groundwater aquifer which is the source of supply;
  - (f) the purpose for which the artificially recharged water will be recovered;
  - (g) the depth and diameter of the existing well or proposed new well;
  - (h) a legal description of the area where the artificially recharged water is proposed to be used;
  - (i) the design pumping capacity of the existing well or proposed new well; and
  - (j) any other information including maps, drawings, and data that the state engineer requires.
- (3)
- (a) A filing fee must be submitted with the application.
  - (b) The state engineer shall establish the filing fee in accordance with Section 63J-1-504.

Amended by Chapter 107, 2010 General Session

**73-3b-205 Issuance of recovery permit -- Criteria -- Conditions.**

The state engineer:

- (1) shall issue the recovery permit if the state engineer determines that:
  - (a) the proposed recovery of artificially recharged water will not impair any existing water right;
  - (b) the applicant is the holder of an approved recharge permit or recovery permit, or if the applicant does not hold the recharge permit, has a valid agreement with the owner of the recharge permit to divert and use the recovered water; and
  - (c) the recovery point of diversion is located within the area of hydrologic impact of the recharge project, as determined by the state engineer; and
- (2) may attach to the permit any conditions the state engineer determines are appropriate.

Amended by Chapter 107, 2010 General Session

**73-3b-206 Proof of completion, certification, or lapse of recovery permit.**

- (1) Sixty days before the date on which the recovery permit will lapse under Subsection (3), the state engineer shall notify the applicant by mail when proof of completion is due.
- (2)
  - (a) Before the date on which the recovery permit will lapse under Subsection (3), the applicant shall file proof of completion with the state engineer on a form furnished by the state engineer, which shall include documentation and a map prepared by a Utah licensed land surveyor or Utah licensed professional engineer that shows:
    - (i) the location and description of the recovery works constructed;
    - (ii) the method of recovering the artificially recharged water;
    - (iii) the facilities in place to recover and deliver the recovered water; and
    - (iv) the purpose and place of use of the recovered water.
  - (b) The state engineer may waive the filing of a map, profile, or drawing, if in the state engineer's opinion the written proof of completion adequately describes the works and the nature and extent of the recovery project.
  - (c) The completed proof shall conform to a rule established by the state engineer.
- (3) A recovery permit will lapse if the recovery project is not completed within five years from the date of the recovery permit application's approval unless:

- (a) the applicant requests an extension of time to complete the recovery project; and
  - (b) the state engineer approves the extension of time.
- (4)
- (a) The state engineer shall issue a recovery certificate if the recovery permittee has demonstrated to the state engineer's satisfaction that:
    - (i) the recovery project is perfected in accordance with the recovery permit; and
    - (ii) water is being recovered.
  - (b) The recovery certificate shall include:
    - (i) the name and post office address of the recovery permittee;
    - (ii) the works used to recover and deliver recovered water; and
    - (iii) other information that defines the extent and conditions of the recovery permit.
  - (c) A recovery certificate issued for a recovery permit need show no more than the facts shown in the proof of completion.
  - (d) A recovery certificate issued under this section does not extend the rights described in the recovery permit.
  - (e)
    - (i) The state engineer shall:
      - (A) retain and file one copy of the recovery certificate; and
      - (B) deliver one copy of the recovery certificate to the recovery permittee.
    - (ii) A recovery permittee shall file the recovery certificate with the county recorder of the county in which the water is recovered.
  - (f) The recovery certificate issued and filed under this section is prima facie evidence of the recovery permittee's right to the recovered water for the purpose, at the place, and during the time specified in the recovery certificate.

Amended by Chapter 107, 2010 General Session

#### **73-3b-207 Assignment of permits.**

- (1) A person who holds a recharge or recovery permit may not assign a permit to another person without the written approval of the state engineer.
- (2) The state engineer must approve an assignment if the proposed assignee meets the requirements of Section 73-3b-202 or 73-3b-205, as applicable.

Enacted by Chapter 146, 1991 General Session

#### **73-3b-208 Proposed new well -- Compliance with water well construction rules.**

An applicant for a recharge permit or recovery permit who intends to construct a new well to recharge or recover artificially recharged water must comply with Sections 73-3-25 and 73-3-26, and rules adopted under those sections, regarding the construction of water wells.

Amended by Chapter 107, 2010 General Session

### **Part 3**

## **Groundwater Recharge and Recovery Operations**

#### **73-3b-301 Storage account -- Monitoring and reporting required.**

- (1) The state engineer shall establish a storage account for each groundwater recharge and recovery project for which a permit has been issued.
- (2) In accordance with specifications of the state engineer, any person holding a groundwater recharge or recovery permit shall:
  - (a) monitor the operation of the project and its impact on land, the groundwater aquifer, and water rights within the project's area of hydrologic impact; and
  - (b) file reports with the state engineer regarding:
    - (i) the quantity of water stored and recovered; and
    - (ii) the water quality of the recharged water, receiving aquifer, and recovered water.

Enacted by Chapter 146, 1991 General Session

**73-3b-302 Fee.**

- (1) The state engineer shall assess an annual fee, in accordance with Section 63J-1-504, on each person who holds a groundwater recharge or recovery permit.
- (2) The fee shall reflect the division's costs to administer and monitor groundwater recharge and recovery projects.

Amended by Chapter 183, 2009 General Session

**73-3b-303 Modification of recharge or recovery permits.**

- (1) The state engineer, on his own initiative or at the request of any person holding a recharge or recovery permit, may modify the conditions of the respective permit, if he finds that modifications are necessary and will not impair existing water rights or the water quality of the aquifer.
- (2) Before any permit condition is modified, the state engineer may require notice to potentially impaired water users if he finds that the modification under consideration may impair existing water rights.

Enacted by Chapter 146, 1991 General Session

## **Part 4**

### **Enforcement and Penalties**

**73-3b-401 Revocation or suspension of recharge and recovery permits.**

The state engineer may:

- (1) periodically review a project to determine if the person who holds the recharge or recovery permit is complying with the conditions of the permit; and
- (2) permanently revoke or temporarily suspend a permit for good cause after an investigation and a hearing.

Enacted by Chapter 146, 1991 General Session

**73-3b-402 Penalty.**

- (1) A person who violates Section 73-3b-103 is subject to a civil penalty in an amount not to exceed \$10,000 per day.

- (2) An action to recover damages under this section shall be brought by the state engineer in the district court in the county in which the violation occurred.

Enacted by Chapter 146, 1991 General Session

## **Chapter 3c Wastewater Reuse Act**

### **Part 1 General Provisions**

#### **73-3c-101 Title.**

This chapter is known as the "Wastewater Reuse Act."

Enacted by Chapter 179, 2006 General Session

#### **73-3c-102 Definitions.**

As used in this chapter:

- (1) "Domestic wastewater" or "sewage" means:
  - (a) a combination of the liquid or water-carried wastes from:
    - (i) structures with installed plumbing facilities; and
    - (ii) industrial establishments; and
  - (b) any groundwater, surface water, and storm water that is present with the waste.
- (2) "POTW" means a publicly owned treatment works as defined by Section 19-5-102.
- (3) "Public agency" means a public agency as defined by Section 11-13-103 that:
  - (a) owns or operates a POTW;
  - (b) collects and transports domestic wastewater;
  - (c) holds legal title to a water right;
  - (d) is delegated the right to the beneficial use or reuse of water by the legal title holder of the water right;
  - (e) is a water supplier; or
  - (f) sells wholesale or retail water.
- (4) "Return flow requirement" means return flow required under a water right.
- (5)
  - (a) "Reuse authorization contract" means a contract or contracts among:
    - (i) a public agency proposing a water reuse project;
    - (ii) the owner or operator of a POTW that treats domestic wastewater proposed for use in a reuse project;
    - (iii) the owner of a domestic wastewater collection or transportation system if the reuse project will divert domestic wastewater directly from that entity's collection or transportation system;
    - (iv) the legal title holder of the water right designated for use in the reuse project, unless the legal title holder of the water right has delegated to another the right to the beneficial use or reuse of the water;

- (v) each water supplier not holding legal title to the water right designated for use in the reuse project that sells or delivers water under the water right designated for use in the reuse project;
  - (vi) each entity that will engage in the wholesale or retail sale of water from the water reuse project; and
  - (vii) the retail water supplier retailing water that will be replaced by reuse water supplied under the proposed reuse project.
- (b) A reuse authorization contract shall:
- (i) provide that a water supplier that is a party to the agreement consents to the use of reuse water under each water right, in which the water supplier has an interest, that is identified for use in the water reuse project; and
  - (ii) provide that any proposed water reuse project based on the contract shall be consistent with the underlying water right.
- (6) "Reuse water" means domestic wastewater treated to a standard acceptable under rules made by the Water Quality Board under Section 19-5-104.
- (7) "Water reuse project" or "project" means a project for the reuse of domestic wastewater that requires approval by the Water Quality Board in accordance with Section 19-5-104 and the state engineer under Section 73-3c-302.
- (8) "Water right" means:
- (a) a right to use water evidenced by any means identified in Section 73-1-10; or
  - (b) a right to use water under an approved application:
    - (i) to appropriate;
    - (ii) for a change of use; or
    - (iii) for the exchange of water.
- (9) "Water supplier" means an entity engaged in the delivery of water for municipal purposes.

Enacted by Chapter 179, 2006 General Session

## **Part 2**

### **Permissible Reuse**

#### **73-3c-201 Reuse by a public agency owning underlying water right.**

- (1) A public agency owning or operating a POTW that treats domestic wastewater consisting of water supplied under a water right the public agency owns may use, or contract for the use of, reuse water if:
- (a) the water right is administered by the state engineer as a municipal water right;
  - (b) the reuse is consistent, under Subsection 73-3c-302(5), with the underlying water right; and
  - (c) the public agency receives approval in accordance with Sections 73-3c-301 and 73-3c-302.
- (2) A change application shall be filed in accordance with Section 73-3-3 if the public agency proposes a water reuse that is inconsistent with the underlying water right.

Enacted by Chapter 179, 2006 General Session

#### **73-3c-202 Reuse by a public agency under a contract authorizing the use of water.**

- (1) A public agency may use or contract for the use of reuse water if:

- (a) the domestic wastewater consists of water for which the public agency has a reuse authorization contract;
  - (b) the water right is administered by the state engineer as a municipal water right;
  - (c) the reuse is consistent, under Subsection 73-3c-302(5), with the underlying water right; and
  - (d) the public agency receives approval in accordance with Sections 73-3c-301 and 73-3c-302.
- (2) A change application shall be filed in accordance with Section 73-3-3 if the public agency proposes a water reuse that is inconsistent with the underlying water right.

Enacted by Chapter 179, 2006 General Session

### **Part 3**

### **Approval Process**

#### **73-3c-301 Application to the Water Quality Board.**

- (1) A public agency proposing a water reuse project shall apply to the Water Quality Board created by Section 19-1-106.
- (2) The Water Quality Board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the consideration and approval of water reuse applications and administration of water reuse construction and operating permits.
- (3) Rules created under Subsection (2) shall require that water reuse meet standards and requirements for water quality set by the Water Quality Board in accordance with Title 19, Chapter 5, Water Quality Act.
- (4) The Water Quality Board shall issue a written decision for each water reuse application.

Amended by Chapter 382, 2008 General Session

#### **73-3c-302 Application to the state engineer.**

- (1) A public agency proposing water reuse shall apply to the state engineer.
- (2) An application for water reuse under Subsection (1) shall be made upon forms furnished by the state engineer and shall include:
  - (a) the name of the applicant;
  - (b) a description of the underlying water right;
  - (c) an evaluation of the underlying water right's diversion, depletion, and return flow requirements;
  - (d) the estimated quantity of water to be reused;
  - (e) the location of the POTW;
  - (f) the place, purpose, and extent of the proposed water reuse;
  - (g) an evaluation of depletion from the hydrologic system caused by the water reuse; and
  - (h) any other information consistent with this chapter that is requested by the state engineer.
- (3) An application under Subsection (1) shall include a copy of a reuse authorization contract for water reuse proposed by a public agency for any underlying water right not owned by the public agency.
- (4) In considering an application for water reuse, the state engineer shall comply with:
  - (a) Section 73-3-6;
  - (b) Section 73-3-7;
  - (c) Section 73-3-10; and



- (d) Section 73-3-14.
- (5) In determining whether a proposed water reuse is consistent with the underlying water right, the state engineer shall conclude that a proposed water reuse is consistent with the underlying water right if:
  - (a) the use of the reuse water does not enlarge the underlying water right; and
  - (b) any return flow requirement of the underlying water right is satisfied.
- (6)
  - (a) The state engineer shall approve a water reuse application if the state engineer concludes that the proposed water reuse is consistent with the underlying water right.
  - (b) The state engineer may:
    - (i) deny an application for water reuse if the proposed water reuse is inconsistent with the underlying water right; or
    - (ii) approve the application in part or with conditions to assure consistency with the underlying water right.
- (7) A public agency with an approved reuse application shall submit a report, as directed by the state engineer, concerning the ongoing water reuse operation.
- (8) The state engineer may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this chapter.

Amended by Chapter 382, 2008 General Session

**73-3c-303 Inflow of unappropriated water -- Application to appropriate.**

If domestic wastewater inflow to a POTW consists of any unappropriated infiltration water, a person may apply to the state engineer to appropriate the unappropriated infiltration water to a beneficial use in accordance with Section 73-3-8.

Enacted by Chapter 179, 2006 General Session

**73-3c-304 Change in point of discharge.**

- (1) The point of discharge of water from a POTW may be changed if the Water Quality Board determines that a change is necessary:
  - (a) for treatment purposes;
  - (b) to enhance environmental quality;
  - (c) to protect public health, safety, or welfare; or
  - (d) to comply with:
    - (i) rules created by the Water Quality Board in accordance with Section 19-5-104; or
    - (ii) the POTW's discharge permit.
- (2) Before changing the point of discharge from a POTW under Subsection (1), the Water Quality Board shall consult with the state engineer.

Enacted by Chapter 179, 2006 General Session

**Part 4**  
**Effect of Reuse**

**73-3c-401 Priority of reuse water.**

If the use of reuse water is consistent with the underlying water right, the priority of the reuse water is the same as the priority of the underlying water right.

Enacted by Chapter 179, 2006 General Session

## **Chapter 4**

### **Determination of Water Rights**

#### **73-4-1 Action for a general adjudication of water rights -- Requirements for state engineer to file -- Adjudication area divisions.**

- (1)
  - (a) Five or more, or a majority of, water users of a water source may submit a signed, verified petition to the state engineer requesting an investigation of the rights of all claimants to the water of the water source.
  - (b) Upon receipt of a petition described in Subsection (1)(a), the state engineer shall:
    - (i) investigate whether the facts and circumstances of the water source and its claimants justify a general determination of water rights; and
    - (ii) if justified, file an action in the district court for a general adjudication of water rights.
  - (c) In any suit involving water rights the court may order an investigation and survey by the state engineer of all the water rights on the source or system involved.
- (2)
  - (a) The executive director of the Department of Environmental Quality, with the concurrence of the governor, may request that the state engineer file in the district court an action to determine the various water rights in the stream, water source, or basin for an area within the exterior boundaries of the state for which any person or organization or the federal government is actively pursuing or processing a license application for a storage facility or transfer facility for high-level nuclear waste or greater than class C radioactive waste.
  - (b) Upon receipt of a request made under Subsection (2)(a), the state engineer shall file an action in the district court for a general adjudication of water rights.
  - (c) If a general adjudication is filed in the state district court regarding the area requested pursuant to Subsection (2)(a), the state engineer and the state attorney general shall join the United States as a party to the action.
- (3) When an action for a general adjudication of water rights for a certain area is filed in district court, the state engineer may divide the general adjudication area into divisions and subdivisions if the state engineer:
  - (a) fulfills the requirements of this chapter individually for each division or subdivision; and
  - (b) petitions the court to incorporate the decrees for all the divisions and subdivisions within a general adjudication area into a final decree for the entire general adjudication area.

Amended by Chapter 258, 2013 General Session

#### **73-4-2 Interstate streams.**

For the purpose of co-operating with the state engineers of adjoining states in the determination and administration of rights to interstate waters and for such other purposes as he may deem expedient, the state engineer, with the approval of the executive director and the governor, is

authorized to initiate and to join in suits for the adjudication of such rights in the federal courts and in the courts of other states without requiring a petition of water users as provided by Section 73-4-1. The state engineer, with the approval of the executive director and the governor, may also commence, prosecute and defend suits to adjudicate interstate waters on behalf of this state or its citizens in the courts of other states, in federal courts, and in the Supreme Court of the United States.

Amended by Chapter 198, 1969 General Session

**73-4-3 Notice and procedure for general adjudication of water rights -- Survey of water source -- Statements of claim -- Incomplete records.**

- (1) Upon the filing of any action by the state engineer as provided in Section 73-4-1, or by any person claiming the right to use the waters of any river system, lake, underground water basin, or other natural source of supply that involves a determination of the rights to the major part of the water of the source of supply or the rights of 10 or more of the claimants of the source of supply, the clerk of the district court shall notify the state engineer that a suit has been filed.
- (2)
  - (a) The state engineer then shall, for each general adjudication area, division, or subdivision, give notice of commencement of action to the claimants by publishing notice:
    - (i) once a week for two consecutive weeks in a newspaper designated by the court as most likely to give notice to such claimants; and
    - (ii) in accordance with Section 45-1-101 for two weeks.
  - (b) The notice of commencement of action shall state:
    - (i) an action has been filed;
    - (ii) the name of the action;
    - (iii) the name and location of the court in which the action is pending; and
    - (iv) the name or description of the water source involved.
  - (c) The state engineer shall file proof of the publication of notice of commencement of action with the district court.
- (3) The state engineer shall, for each general adjudication area, division, or subdivision, search the records of the state engineer's office to locate all possible claimants, and continue to update the records during the adjudication and search for additional claimants.
- (4) In accordance with Section 73-4-4, the state engineer shall serve a summons to each claimant of record in the state engineer's office within a general adjudication area, division, or subdivision.
- (5)
  - (a) After serving summons to a claimant, the state engineer shall give notice of further proceedings to:
    - (i) the claimant; and
    - (ii) an attorney who enters an appearance in court for the claimant.
  - (b) A court order is not required as a prerequisite for giving notice under Subsection (5)(a).
  - (c) The state engineer shall give the notice described in Subsection (5)(a):
    - (i) electronically, if the state engineer can verify the claimant's receipt;
    - (ii) by mail;
    - (iii) by personal service; or
    - (iv) if the notice is for the benefit of the claimants generally, by publishing the notice.
  - (d) Notice given by mail is complete when the notice is mailed.

- (6) Except as provided in Subsection (8)(d)(ii), if the state engineer serves a notice required by this chapter, the state engineer shall, before the day on which the final decree for the general adjudication area, division, or subdivision is filed, file with the clerk of the district court a certificate of service that contains the name and address of the claimant served with the notice.
- (7) After publishing notice of commencement of an action, the state engineer shall:
  - (a) begin the survey of the water source and the ditches, canals, wells, tunnels, or other works diverting water from the water source; and
  - (b) hold a public meeting in the survey area to inform a water right claimant of the survey.
- (8)
  - (a) After the survey described in Subsection (7) is complete for a claimant, the state engineer shall give notice, in accordance with Subsection (5), of completion of survey to the claimant.
  - (b) Notice of completion of survey shall include:
    - (i) a statement that:
      - (A) the state engineer has investigated the claimant's water right; and
      - (B) a claimant who desires to claim a water right in the action shall, in accordance with Section 73-4-5, submit a written statement of claim within 90 days after the day on which the notice is issued; and
    - (ii) a statement of claim form that the claimant must complete in order to comply with the provisions of Section 73-4-5.
  - (c) A claimant served with a notice of completion of survey who desires to claim a water right in the action shall file a written statement of claim in accordance with Section 73-4-5.
  - (d)
    - (i) The state engineer shall compile the statements of claim described in Subsection (8)(c) and file them with the clerk of the district court.
    - (ii) If the state engineer files a claimant's statement of claim with the district court in accordance with Subsection (8)(d)(i), the state engineer is not required to file a certificate of service that relates to the notice of completion of survey for that claimant.
- (9) When a suit has been filed by the state engineer as provided by Section 73-4-1, or by any person involving the major part of the waters of any river system, lake, underground water basin, or other source of supply, or the rights of 10 or more of the water claimants of the source of supply, whether the suit is filed prior to or after the enactment hereof, the state engineer, upon receiving notice, shall examine the records of the state engineer's office with respect to the water source involved, and if they are incomplete to make such further investigation and survey as may be necessary for the preparation of the report and recommendation as required by Section 73-4-11.
- (10) In all such cases the court shall proceed to determine the water rights involved in the manner provided by this chapter, and not otherwise.

Amended by Chapter 258, 2013 General Session

**73-4-4 Summons for general adjudication of water rights -- Requirements to serve summons individually and generally -- Statement of claim requirement.**

- (1)
  - (a) The state engineer shall, by mail, serve a summons to a claimant of record in the state engineer's office within a general adjudication area, division, or subdivision.
  - (b)
    - (i) The state engineer may serve, by publication, a general summons to claimants in a general adjudication area, division, or subdivision, who are not of record in the state engineer's

office, if the state engineer files an affidavit with the district court, verifying that the state engineer has, in accordance with Section 73-4-3, searched the records of the state engineer's office for claimants in the general adjudication area, division, or subdivision.

- (ii) The state engineer shall publish, in accordance with the Utah Rules of Civil Procedure, a general summons described in Subsection (1)(b)(i):
  - (A) once a week for five successive weeks in one or more newspapers, determined by the judge of the district court as most likely to give notice to the claimants served; and
  - (B) for five weeks, in accordance with Section 45-1-101.
- (iii) Service of a general summons is completed upon the last required date of publication.
- (c) The summons shall be substantially in the following form:

"In the District Court of ..... County, State of Utah, in the matter of the general adjudication of water rights in the described water source.

#### SUMMONS

The State of Utah to the said defendant:

You are hereby summoned to appear and defend the above entitled action which is brought for the purpose of making a general determination of the water rights of the described water source. Upon the service of this summons upon you, you will thereafter be subject to the jurisdiction of the entitled court and it shall be your duty to follow further proceedings in the above entitled action and to protect your rights therein. When the state engineer has completed the survey you will be given a further written notice, either in person or by mail, sent to your last-known address, that you must file a water users claim in this action setting forth the nature of your claim, and said notice will specify the date upon which your water users claim is due and thereafter you must file said claim within the time set and your failure so to do will constitute a default in the premises and a judgment may be entered against you declaring and adjudging that you have no right in or to the waters of described water source."

- (2) If the state engineer is required, under this section, to serve a summons on the United States, the state engineer shall serve the summons in accordance with federal law.

Amended by Chapter 258, 2013 General Session

#### **73-4-5 Requirements for statement of claim in general adjudication of water rights.**

Each person claiming a right to use water of a river system or water source shall, within 90 days after the day on which notice of completion of survey described in Section 73-4-3 is served, file with the state engineer or the clerk of the district court a written statement of claim, signed, and verified under oath, by the claimant, that includes:

- (1) the name and address of the claimant;
- (2) the nature of use on which the claim of appropriation is based;
- (3) the flow of water used in cubic feet per second, or the quantity of water stored in acre-feet, and the time during which the flow or stored water has been used each year;
- (4) the name of the stream or other source from which the water is diverted, the point on the stream or source where the water is diverted, and a description of the nature of the diverting works;
- (5) the date when the first work for diverting the water began, and a description of the nature of the work;
- (6) the date when the water was first used, the flow in cubic feet per second, or the quantity of water stored in acre-feet, and the time the water was used during the first year;
- (7) the place and manner of current use; and

- (8) other facts that clearly define the extent and nature of the appropriation claimed, or that are required by the written form provided by the state engineer with the notice of completion of survey.

Amended by Chapter 258, 2013 General Session

**73-4-6 In case of use for irrigation.**

If the water claimed to have been appropriated is used for irrigation, the statement shall show, in addition to the facts required by Section 73-4-5, as nearly as possible the area of land irrigated the first year and each subsequent year; the total area irrigated at the time of filing and its location in each section, township and range wherein it is situated; the character and depth of the soil, the kind of crops raised and the maximum and minimum acreage irrigated during the total period of use.

No Change Since 1953

**73-4-7 In case of use for power purposes.**

If the water claimed to have been appropriated is used for developing power, the statement shall show, in addition to the facts required by Section 73-4-5, the number, size and kind of water wheels employed; the head under which each wheel is operated; the amount of power produced, and the purposes for which and the places where it is used; and the point where the water is returned to the natural stream or source.

No Change Since 1953

**73-4-8 In case of use for mining or milling.**

If water claimed to have been appropriated is used for milling or mining, the statement shall show, in addition to the facts required by Section 73-4-5, the name of the mill and its location, or the name of the mine and the mining district in which it is situated; the nature of the material milled or mined, and the point where the water is returned to the natural stream or source.

No Change Since 1953

**73-4-9 Failure to file statement -- Relief.**

The filing of each statement by a claimant shall be considered notice to all persons of the claim of the party making the same, and any person failing to make and deliver such statement of claim to the state engineer or the clerk of the court within the time prescribed by law shall be forever barred and estopped from subsequently asserting any rights, and shall be held to have forfeited all rights to the use of the water theretofore claimed by him; provided, that any claimant, upon whom no other service of said notice shall have been made than by publication in a newspaper and as required in Section 45-1-101, may apply to the court for permission to file a statement of claim after the time therefor has expired, and the court may extend the time for filing such statement, not exceeding six months from the publication of said notice; but, before said time is extended, the applicant shall give notice by publication in a newspaper having general circulation and as required in Section 45-1-101 on such river system or near the water source to all other persons interested in the water of such river system or water source, and shall make it appear to the satisfaction of the court that during the pendency of the proceedings he had no actual notice thereof in time to appear

and file a statement and make proof of his claim; and all parties interested may be heard as to the matter of his actual notice of the pendency of such proceedings.

Amended by Chapter 258, 2013 General Session

**73-4-10 Amendment of pleadings -- Extensions of time.**

The court shall have power to allow amendments to any petition, statement or pleading; to extend as provided in this title the time for filing any statement of claim; and to extend, upon due cause shown, the time for filing any other pleading, statement, report or protest.

No Change Since 1953

**73-4-11 Report and recommendation by engineer to court -- Notice -- Public meeting.**

- (1) Within 30 days after the last day on which a claimant may file a statement of claim in accordance with Section 73-4-5, the state engineer shall begin to tabulate the facts contained in the statements filed and to investigate, whenever the state engineer shall consider necessary, the facts set forth in the statements by reference to the surveys already made or by further surveys, and shall as expeditiously as possible report to the court a recommendation of how all rights involved shall be determined.
- (2) After full consideration of the statements of claims, and of the surveys, records, and files, and after a personal examination of the river system or water source involved, if the examination is considered necessary, the state engineer shall:
  - (a) formulate a report and a proposed determination of all rights to the use of the water of the river system or water source;
  - (b) serve notice of completion of the report and proposed determination, in accordance with Subsection 73-4-3(5), to each claimant of record in the state engineer's office within the general adjudication area, division, or subdivision, that includes:
    - (i)
      - (A) a copy of the report and proposed determination; or
      - (B) instructions on how to obtain or access an electronic copy of the report and proposed determination; and
    - (ii) a statement describing the claimant's right to file an objection to the report and proposed determination within 90 days after the day on which the notice of completion of the report and proposed determination is served; and
  - (c) hold a public meeting in the area covered by the report and proposed determination to describe the report and proposed determination to the claimants.
- (3) A claimant who desires to object to the state engineer's report and proposed determination shall, within 90 days after the day on which the state engineer served the claimant notice of completion of the report and proposed determination, file a written objection to the report and proposed determination with the clerk of the district court.
- (4) The state engineer shall distribute the waters from the natural streams or other natural sources:
  - (a) in accordance with the proposed determination or modification to the proposed determination by court order until a final decree is rendered by the court; or
  - (b) if the right to the use of the waters has been decreed or adjudicated, in accordance with the decree until the decree is reversed, modified, vacated, or otherwise legally set aside.

Amended by Chapter 258, 2013 General Session

#### **73-4-12 Judgment -- In absence of contest.**

If no contest on the part of any claimant shall have been filed, the court shall render a judgment in accordance with such proposed determination, which shall determine and establish the rights of the several claimants to the use of the water of said river system or water source; and among other things it shall set forth the name and post-office address of the person entitled to the use of the water; the quantity of water in acre-feet or the flow of water in second-feet; the time during which the water is to be used each year; the name of the stream or other source from which the water is diverted; the point on the stream or other source where the water is diverted; the priority date of the right; and such other matters as will fully and completely define the rights of said claimants to the use of the water.

No Change Since 1953

#### **73-4-13 In case of contest -- Notice of hearing.**

If any contest or objection on the part of any claimant shall have been filed, as in this chapter provided, the court shall give not less than 15 days' notice to all claimants, stating when and where the matter will be heard.

No Change Since 1953

#### **73-4-14 Pleadings -- Expert assistance for court.**

The statements filed by the claimants shall stand in the place of pleadings, and issues may be made thereon. Whenever requested so to do the state engineer shall furnish the court with any information which he may possess, or copies of any of the records of his office which relate to the water of said river system or water source. The court may appoint referees, masters, engineers, soil specialists or other persons as necessity or emergency may require to assist in taking testimony or investigating facts, and in all proceedings for the determination of the rights of claimants to the water of a river system or water source the filed statements of claimants shall be competent evidence of the facts stated therein unless the same are put in issue.

No Change Since 1953

#### **73-4-15 Judgment after hearing.**

Upon the completion of the hearing, after objections filed, the court shall enter judgment which shall determine and establish the rights of the several claimants to the use of the water of the river system or water source as provided in Section 73-4-12.

No Change Since 1953

#### **73-4-16 Appeals.**

From all final judgments of the district court there shall be a right of appeal to the Supreme Court as in other cases. The appeal shall be upon the record made in the district court, and may as in equity cases be on questions of both law and fact. All proceedings on appeal shall be conducted according to the provisions of the Code of Civil Procedure.

No Change Since 1953

#### **73-4-17 Certified copy of final judgment -- Filing.**



Within 30 days after the entry of final judgment of the district court, or if an appeal is taken from a district court judgment, within 30 days after the final judgment on remittitur is entered, it shall be the duty of the clerk of the district court to deliver to the state engineer a certified copy of such judgment and to cause a certified copy thereof to be filed with the county recorder of each county in which the water adjudicated is diverted from its natural source and of each county where the water is applied. No filing fee shall be charged by either the state engineer or the county recorder.

Amended by Chapter 127, 1992 General Session

**73-4-18 General determination in court's discretion -- State to be made a party.**

Whenever any civil action is commenced in the district court involving fewer than 10 water claimants or less than the major part of the rights to the use of water from any river system, lake, underground water basin, or other source, the court in its discretion may, if a general determination of the rights to the use of water from said water source has not already been made, proceed, as in this chapter provided, to make such a general determination. In any such action for the determination of water rights the state of Utah shall be joined as a necessary party.

No Change Since 1953

**73-4-19 Redetermination -- Bond of applicant.**

Wherever a general determination of water rights upon any river system or water source has been made by the district court, any claimant to the use of water from such river system or water source seeking a redetermination of water rights upon such river system or water source shall, before commencing any action for such redetermination or for the revision of any final judgment other than as provided in Section 73-4-1, furnish to the court in which such action is commenced and before the filing of any petition or complaint for such purpose, a good and sufficient bond, in a form and with sureties approved by the court, in a sum fixed by the court at least equal to twice the estimated costs which may arise in such action, conditioned that if final judgment after hearing, or after appeal should appeal be taken, is awarded against such claimant, then such claimant will pay all costs arising in such action and all damages to other parties thereto arising therefrom.

No Change Since 1953

**73-4-20 Revolving fund -- Money expended not assessable against water users -- Transfer of unexpended money to adjudication fund -- Payment of costs of determinations -- Money expended from adjudication fund not assessable against water users -- Surplus to remain in adjudication fund.**

Money heretofore expended from the state engineer's revolving fund in pending adjudications shall not be assessable against the water users. All money remaining and unexpended in the state engineer's revolving fund as of July 1, 1953, including money appropriated to the revolving fund for the biennium ending June 30, 1955, shall be transferred to a fund of the state engineer to be known as the adjudication fund. The revolving fund shall be closed out upon such transfer of money. The state engineer shall pay all costs of determinations with money appropriated to the office of the state engineer and deposited in the adjudication fund and with money transferred to such fund as provided above. The money expended from such fund shall not be assessable against the water users. Any money remaining in such fund at the end of the biennium shall not revert to the general fund but shall remain in the adjudication fund until expended.

Amended by Chapter 131, 1953 Special Session C

**73-4-21 Duty to follow court proceedings -- Additional notice.**

After the service of summons in the manner prescribed by Section 73-4-4 hereof, it shall be the duty of every person served to thereafter follow all court proceedings and no further or additional notice shall be required except the notice that the survey has been completed and the water users claim is due as prescribed by Section 73-4-3, and notice of the proposed determinations as provided by Section 73-4-11. The district court may, however, require notice of other proceedings to be given when, in the judgment of the court, it deems notice necessary.

No Change Since 1953

**73-4-22 State engineer's duty to search records for and serve summons on claimants -- Filing of affidavit -- Publication of summons -- Binding on unknown claimants.**

The state engineer, throughout the pendency of proceedings, shall serve summons in the manner prescribed by Section 73-4-4 upon all claimants to the use of water in the described source embraced by said action, whenever the names and addresses of said persons come to the attention of the state engineer. Immediately after the notice of the proposed determination is given, in accordance with Section 73-4-11 hereof, the state engineer shall diligently search for the names and addresses of any claimants to water in the source covered by the proposed determination who have not been previously served with summons other than by publication, and any such persons located shall forthwith be served with summons, and after the state engineer has exhausted his search for other claimants he shall make such fact known to the district court by affidavit and the clerk of the district court shall again publish summons five times, once each week, for five successive weeks which said service shall be binding upon all unknown claimants.

Amended by Chapter 258, 2013 General Session

**73-4-23 Effective date of amendatory act -- Application to pending suits -- State engineer's certificate.**

This act shall be effective 60 days from its enactment and shall apply to all suits now pending under Title 73, Chapter 4, Determination of Water Rights, Utah Code Annotated 1953, except those proceedings under which the state engineer has by the effective date hereof completed his survey, and it is expressly provided that those actions where the state engineer has by the effective date of this act completed his survey may proceed to completion under the procedure prescribed by the statutes heretofore existing. The state engineer shall within 10 days after the effective date of this act file with the clerk of the court in each action then pending under Title 73, Chapter 4, Determination of Water Rights, Utah Code Annotated 1953, a certificate under the seal of his office stating whether or not he has completed the survey so that all persons will have notice and can know whether or not this act is applicable to such existing suit.

No Change Since 1953

**73-4-24 Petition for expedited hearing of objection -- Petition for limited determination.**

(1) A claimant to the use of water may petition the court to expedite the hearing of a valid, timely objection to a report and proposed determination prepared in accordance with Section 73-4-11 in which the claimant has a direct interest.

- (2) A petition under Subsection (1) shall identify any party directly affected by the objection, if known to the claimant, and state why the hearing of the objection should be expedited.
- (3) A petitioner under Subsection (1) shall notify those affected by the petition as directed by the court.
- (4) The court may grant a petition under Subsection (1) if:
  - (a) the court finds that the expedited hearing is necessary in the interest of justice;
  - (b) granting the petition will facilitate a reasonably prompt resolution of the matters raised in the objection; and
  - (c) granting the petition does not prejudice the right of another claimant.
- (5) During the pendency of a general adjudication suit, a claimant or group of claimants may petition the court to direct the state engineer to survey and prepare a proposed determination for a limited area within the general adjudication area in which the claimant or group of claimants has a claim.
- (6) The court may grant a petition under Subsection (5) if:
  - (a) the claimant or group of claimants will suffer prejudice if the petition is not granted;
  - (b) the matters raised by the claimant or group of claimants are proper for determination in a general adjudication;
  - (c) granting the petition will not unduly burden the state engineer's resources; and
  - (d) granting the petition will not unduly interfere with the state engineer's discretion to allocate resources for the preparation of another proposed determination.
- (7) If the court grants a petition under this section, the state engineer shall comply with this chapter in satisfying the court's order.

Repealed and Re-enacted by Chapter 320, 2010 General Session

## **Chapter 5**

### **Administration and Distribution**

#### **73-5-1 Appointment of water commissioners -- Procedure.**

- (1)
  - (a) If, in the judgment of the state engineer or the district court, it is necessary to appoint a water commissioner for the distribution of water from any river system or water source, the commissioner shall be appointed for a four-year term by the state engineer.
  - (b) The state engineer shall determine whether all or a part of a river system or other water source shall be served by a commissioner, and if only a part is to be served, the state engineer shall determine the boundaries of that part.
  - (c) The state engineer may appoint:
    - (i) more than one commissioner to distribute water from all or a part of a water source; or
    - (ii) a single commissioner to distribute water from several separate and distinct water sources.
- (2)
  - (a) The state engineer shall consult with the water users before appointing a commissioner. The form of consultation and notice to be given shall be determined by the state engineer so as to best suit local conditions, while providing for full expression of majority opinion.
  - (b) If a majority of the water users agree upon a qualified person to be appointed as water commissioner, the duties the person shall perform, and the compensation the person shall

receive, and they make recommendations to the state engineer on the appointment, duties, and compensation, the state engineer shall act in accordance with their recommendations.

- (c) If a majority of water users do not agree on the appointment, duties, or compensation, the state engineer shall make a determination for them.
- (3)
- (a)
    - (i) The salary and expenses of the commissioner and all other expenses of distribution, including printing, postage, equipment, water users' expenses, and any other expenses considered necessary by the state engineer, shall be borne pro rata by the users of water from the river system or water source in accordance with a schedule to be fixed by the state engineer.
    - (ii) The schedule shall be based on the established rights of each water user, and the pro rata share shall be paid by each water user to the state engineer on or before May 1 of each year.
  - (b) The payments shall be deposited in the Water Commissioner Fund created in Section 73-5-1.5.
  - (c) If a water user fails to pay the assessment as provided by Subsection (3)(a), the state engineer may do any or all of the following:
    - (i) create a lien upon the water right affected by filing a notice of lien in the office of the county recorder in the county where the water is diverted and bring an action to enforce the lien;
    - (ii) forbid the use of water by the delinquent water user or the delinquent water user's successors or assignees, while the default continues; or
    - (iii) bring an action in the district court for the unpaid expense and salary.
  - (d) In any action brought to collect any unpaid assessment or to enforce any lien under this section, the delinquent water user shall be liable for the amount of the assessment, interest, any penalty, and for all costs of collection, including all court costs and a reasonable attorney fee.
- (4)
- (a) A commissioner may be removed by the state engineer for cause.
  - (b) The users of water from any river system or water source may petition the district court for the removal of a commissioner and after notice and hearing, the court may order the removal of the commissioner and direct the state engineer to appoint a successor.

Amended by Chapter 193, 2006 General Session

### **73-5-1.5 Water Commissioner Fund.**

- (1) There is created a private-purpose trust fund known as the "Water Commissioner Fund."
  - (2) The fund consists of assessments paid to the state engineer by water users pursuant to Subsection 73-5-1(3).
- (3)
- (a) The fund shall earn interest.
  - (b) Interest earned on fund money shall be deposited into the fund.
- (4) The state engineer shall use fund money to pay for salary and expenses of water commissioners and other expenses related to the distribution of water specified in Subsection 73-5-1(3).

Amended by Chapter 256, 2002 General Session

**73-5-3 Control by engineer of division and distribution under judgments.**

- (1) The state engineer or the state engineer's designee shall carry into effect a judgment of a court in relation to the division, distribution, or use of water under the provisions of this title.
- (2) The state engineer shall:
  - (a) divide water among several appropriators entitled to the water in accordance with the right of each appropriator;
  - (b) regulate and control the use of the water by closing or partially closing a head gate, cap, valve, or other controlling work of a ditch, canal, pipe, flume, well or tunnel, or other means of diversion to prevent the waste of water or its use in excess of the quantity to which an appropriator is lawfully entitled; and
  - (c) regulate a controlling work of reservoirs in accordance with the provisions of this title.
- (3)
  - (a) If the state engineer regulates a head gate, cap, valve, or other controlling work of a ditch, canal, pipe, flume, well or tunnel, or other means of diversion, or the controlling work of a reservoir, the state engineer may attach to the controlling work a written notice, properly dated and signed, setting forth that the controlling work has been properly regulated and is wholly under the state engineer's control.
  - (b) The notice provided under Subsection (3)(a) shall be a legal notice, as to the facts contained in the notice, to all parties interested in the division and distribution of the water of the ditch, canal, pipe, flume, well or tunnel, or other means of diversion, or reservoir.
- (4)
  - (a) If the state engineer is required to enter upon private property to carry out the provisions of this title and is refused by the owner or possessor of the property the right of entry, the state engineer may petition the district court for an order granting a right of entry.
  - (b) After notice and hearing the court may grant the state engineer a right of entry, on security given by the state engineer to pay the owner of the property for all damage caused by the entry.

Amended by Chapter 369, 2014 General Session

**73-5-4 Controlling works and measuring devices.**

- (1) To assist the state engineer or water commissioner in the regulation, distribution, and measurement of water, a person using water in this state, except as provided by Subsection (4), shall construct or install and maintain controlling works and a measuring device at:
  - (a) each location where water is diverted from a source; and
  - (b) any other location required by the state engineer.
- (2) A person using water in this state shall make the controlling works and measuring device accessible to the state engineer or water commissioner.
- (3) The state engineer shall approve the design of:
  - (a) the measuring device; and
  - (b) controlling works so that the state engineer or a water commissioner may regulate and lock the works.
- (4) A person using water as an instream flow:
  - (a) shall install and maintain a measuring device or stream gauging station in the section of the stream within which the instream flow is maintained; and
  - (b) is not required to install controlling works unless the state engineer's order approving the application requires the installation because controlling works are necessary to achieve the purpose of the application.

- (5)
  - (a) An owner or manager of a reservoir shall construct and maintain a measuring device as directed by the state engineer to measure the inflow, storage content, and outflow from the reservoir.
  - (b) The state engineer shall approve the design and location of the measuring device.
  - (c) The owner or manager of a reservoir shall make the measuring device accessible to the state engineer or water commissioner.
- (6) If a water user refuses or neglects to construct or install the controlling works or measuring device after 30 days' notice to do so by the state engineer, the state engineer may:
  - (a) forbid the use of water until the user complies with the state engineer's requirement; and
  - (b) commence enforcement proceedings authorized by Section 73-2-25.

Amended by Chapter 311, 2008 General Session

### **73-5-7 Inspection of ditches and diverting works by engineer.**

- (1)
  - (a) The state engineer shall have authority to examine and inspect any ditch or other diverting works, and at the time of such inspection, the state engineer may order the owners thereof to make any addition or alteration that the state engineer considers necessary for the security of such works, the safety of persons, or the protection of property.
  - (b) If any person, firm, copartnership, association, or corporation refuses or neglects to comply with the requirements of the state engineer as described in Subsection (1)(a), the state engineer may bring action in the name of the state in the district court to enforce the order.
- (2) The state engineer shall, by July 1, 2017, inventory and maintain a list of all open, human-made water conveyance systems that carry 5 cubic feet per second or more in the state, including the following information on each conveyance system:
  - (a) alignment;
  - (b) contact information of the owner;
  - (c) maximum flow capacity in cubic feet per second;
  - (d) whether the conveyance system is used for flood or storm water management; and
  - (e) notice of the adoption of a management plan for the conveyance system as reported to the Division of Water Resources under Section 73-10-33.
- (3) The owner of an open, human-made water conveyance system that carries 5 cubic feet per second or more shall inform the state engineer if the information described in Subsection (2) changes.
- (4) The state engineer:
  - (a) may contract with a local conservation district created in Title 17D, Chapter 3, Conservation District Act, to fulfill the duties described in Subsection (2); and
  - (b) may contract a local conservation district created in Title 17D, Chapter 3, Conservation District Act, to provide technical support for a canal owner who is adopting a management plan, as described in Section 73-10-33.

Amended by Chapter 355, 2014 General Session

### **73-5-8 Reports by users to engineer.**

Every person using water from any river system or water source, when requested by the state engineer, shall within 30 days after such request report to the state engineer in writing:

- (1) the nature of the use of any such water;

- (2) the area on which used;
- (3) the kind of crops to be grown; and
- (4) water elevations on wells or tunnels and quantity of underground water used.

Amended by Chapter 215, 2005 General Session

**73-5-9 Powers of state engineer as to waste, pollution, or contamination of waters.**

- (1) To prevent waste, loss, pollution, or contamination of any waters whether above or below the ground, the state engineer may require the repair or construction of head gates or other devices on ditches or canals, and the repair or installation of caps, valves, or casings on any well or tunnel or the plugging or filling thereof to accomplish the purposes of this section.
- (2) Any requirement made by the state engineer in accordance with this section shall be executed by and at the cost and expense of the owner, lessee or person having control of such diverting works affected.
- (3) If within 10 days after notice of such requirement as provided in this section, the owner, lessee or person having control of the water affected, has not commenced to carry out such requirement, or if he has commenced to comply therewith but shall not thereafter proceed diligently to complete the work, the state engineer may forbid the use of water from such source until the user thereof shall comply with such requirement.
- (4) Failure to comply with any requirement made by the state engineer under this section is a crime punishable under Section 73-2-27 if the failure to comply is knowing or intentional.
- (5) Each day that such violation is permitted to continue shall constitute a separate offense.

Amended by Chapter 215, 2005 General Session

**73-5-13 Claim to surface or underground water not otherwise represented -- Information required -- Corrections -- Filing -- Investigation -- Publication -- Judicial action to determine validity -- Rules.**

- (1)
  - (a) A claimant to the right to the use of water, including both surface and underground water, whose right is not represented by a certificate of appropriation issued by the state engineer, by an application filed with the state engineer, by a court decree, or by a notice of claim filed pursuant to law, shall submit the claim to the state engineer in accordance with this section.
  - (b) Subsections (2) through (7) only apply to claims or corrected claims submitted to the state engineer in accordance with this section on or after May 14, 2013.
- (2)
  - (a) A claim submitted under this section shall be verified under oath by the claimant or the claimant's duly appointed representative and submitted on forms provided by the state engineer setting forth any information the state engineer requires, including:
    - (i) the name and mailing address of the person making the claim;
    - (ii) the quantity of water claimed in acre-feet or rate of flow in second-feet, or both, where appropriate;
    - (iii) the source of supply;
    - (iv) the priority date of the right;
    - (v) the location of the point of diversion with reference to a United States land survey corner;
    - (vi) the place of use;
    - (vii) the nature and extent of use;
    - (viii) the time during which the water has been used each year; and

- (ix) the date when the water was first used.
- (b) The claim shall also include the following information, prepared by a Utah licensed engineer or a Utah licensed land surveyor:
  - (i) measurements of the amount of water diverted;
  - (ii) a statement that the quantity of water claimed either in acre-feet or cubic feet per second is consistent with the beneficial use claimed and the supply that the source is capable of producing; and
  - (iii) a map showing the original diversion and conveyance works and where the water was placed to beneficial use, including irrigated lands, if irrigation is the claimed beneficial use.
- (c) The state engineer may require additional information as necessary to evaluate any claim including:
  - (i) affidavits setting forth facts of which the affiant has personal knowledge;
  - (ii) authenticated or historic photographs, plat or survey maps, or surveyors' notes;
  - (iii) authenticated copies of original diaries, personal histories, or other historical documents that document the claimed use of water; and
  - (iv) other relevant records on file with any county recorder's, surveyor's, or assessor's office.
- (3)
  - (a) A claimant, or a claimant's successor in interest, as shown in the records of the state engineer may file a corrected claim that:
    - (i) is designated as a corrected claim;
    - (ii) includes the information described in Subsection (2); and
    - (iii) bears the same number as the original claim.
  - (b) If a corrected claim that meets the requirements described in Subsection (3)(a) is filed before the state engineer publishes the original claim in accordance with Subsection (4)(a)(iv), the state engineer may not charge an additional fee for filing the corrected claim.
  - (c) The state engineer shall treat a corrected claim that is filed in accordance with Subsection (3)(a) as if the corrected claim were the original claim.
- (4)
  - (a) When a claimant submits a claim that is acceptably complete under Subsection (2) and deposits money with the state engineer sufficient to pay the expenses of conducting a field investigation and publishing a notice of the claim, the state engineer shall:
    - (i) file the claim;
    - (ii) endorse the date of its receipt;
    - (iii) assign the claim a water right number;
    - (iv) publish a notice of the claim following the same procedures as provided in Section 73-3-6; and
    - (v) if the claimant is the federal government or a federal agency, provide a copy of the claim to the members of the Natural Resources, Agriculture, and Environment Interim Committee.
  - (b) Any claim not acceptably complete under Subsection (2) shall be returned to the claimant.
  - (c) The acceptance of any claim filed under this section by the state engineer may not be considered to be an adjudication by the state engineer of the validity of the claimed water right.
- (5)
  - (a) The state engineer shall:
    - (i) conduct a field investigation of each claim filed; and
    - (ii) prepare a report of the investigation.
  - (b) The report of the investigation shall:
    - (i) become part of the file on the claim; and



- (ii) be admissible in any administrative or judicial proceeding regarding the validity of the claim.
- (6)
- (a) Any person who may be damaged by a diversion and use of water as described in a claim submitted pursuant to this section may file an action in district court to determine the validity of the claim, regardless of whether the state engineer has filed the claim in accordance with Subsection (4)(a).
  - (b) Venue for an action brought under Subsection (6)(a) shall be in the county where the point of diversion listed in the claim is located, or in a county where the place of use, or some part of it, is located.
  - (c) The action shall be brought against the claimant to the use of water or the claimant's successor in interest.
  - (d) In any action brought to determine the validity of a claim to the use of water under this section, the claimant shall have the initial burden of proof as to the validity of the claimed right.
- (e)
- (i) A person filing an action challenging the validity of a claim to the use of water under this section shall notify the state engineer of the pendency of the action in accordance with state engineer rules.
  - (ii) Upon receipt of the notice, the state engineer may take no action on any change or exchange applications founded on the claim that is the subject of the pending litigation until the court adjudicates the matter.
- (f) Upon the entering of any final order or decree in a judicial action to determine the validity of a claim under this section, the prevailing party shall file a certified copy of the order or decree with the state engineer, who shall incorporate the order into the state engineer's file on the claim.
- (7)
- (a) In a general adjudication of water rights under Title 73, Chapter 4, Determination of Water Rights, after completion of final summons in accordance with Section 73-4-22, a district court may, by decree, prohibit future claims from being filed under this section in the general adjudication area, division, or subdivision.
  - (b) If the state engineer receives a claim for an area where a court has prohibited filing under Subsection (7)(a), the state engineer shall return the claim to the claimant without further action.

Amended by Chapter 221, 2013 General Session

Amended by Chapter 343, 2013 General Session

Amended by Chapter 429, 2013 General Session

Amended by Chapter 429, 2013 General Session, (Coordination Clause)

**73-5-14 Determination by the state engineer of watershed to which particular source is tributary -- Publications of notice and result -- Hearing -- Judicial review.**

- (1) The state engineer may determine for administrative and distribution purposes the watershed to which any particular stream or source of water is tributary.
- (2) A determination under Subsection (1) may be made only after publication of notice to the water users.
- (3) Publication of notice under Subsection (2) shall be made:
  - (a) in a newspaper or newspapers having general circulation in every county in the state in which any rights might be affected, once each week for five consecutive weeks;

- (b) in accordance with Section 45-1-101 for five weeks; and
- (c) on the Utah Public Notice Website created in Section 63F-1-701, for five weeks.
- (4) The state engineer shall fix the date and place of hearing and at the hearing any water user shall be given an opportunity to appear and adduce evidence material to the determination of the question involved.
- (5)
  - (a) The state engineer shall publish the result of the determination as provided in Subsections (3)(a) and (b), and the notice of the decision of the state engineer shall notify the public that any person aggrieved by the decision may appeal the decision as provided by Section 73-3-14.
  - (b) The notice under Subsection (5)(a) shall be considered to have been given so as to start the time for appeal upon completion of the publication of notice.

Amended by Chapter 90, 2010 General Session

**73-5-15 Groundwater management plan.**

- (1) As used in this section:
  - (a) "Critical management area" means a groundwater basin in which the groundwater withdrawals consistently exceed the safe yield.
  - (b) "Safe yield" means the amount of groundwater that can be withdrawn from a groundwater basin over a period of time without exceeding the long-term recharge of the basin or unreasonably affecting the basin's physical and chemical integrity.
- (2)
  - (a) The state engineer may regulate groundwater withdrawals within a specific groundwater basin by adopting a groundwater management plan in accordance with this section for any groundwater basin or aquifer or combination of hydrologically connected groundwater basins or aquifers.
  - (b) The objectives of a groundwater management plan are to:
    - (i) limit groundwater withdrawals to safe yield;
    - (ii) protect the physical integrity of the aquifer; and
    - (iii) protect water quality.
  - (c) The state engineer shall adopt a groundwater management plan for a groundwater basin if more than one-third of the water right owners in the groundwater basin request that the state engineer adopt a groundwater management plan.
- (3)
  - (a) In developing a groundwater management plan, the state engineer may consider:
    - (i) the hydrology of the groundwater basin;
    - (ii) the physical characteristics of the groundwater basin;
    - (iii) the relationship between surface water and groundwater, including whether the groundwater should be managed in conjunction with hydrologically connected surface waters;
    - (iv) the conjunctive management of water rights to facilitate and coordinate the lease, purchase, or voluntary use of water rights subject to the groundwater management plan;
    - (v) the geographic spacing and location of groundwater withdrawals;
    - (vi) water quality;
    - (vii) local well interference; and
    - (viii) other relevant factors.
  - (b) The state engineer shall base the provisions of a groundwater management plan on the principles of prior appropriation.

- (c)
  - (i) The state engineer shall use the best available scientific method to determine safe yield.
  - (ii) As hydrologic conditions change or additional information becomes available, safe yield determinations made by the state engineer may be revised by following the procedures listed in Subsection (5).
- (4)
  - (a)
    - (i) Except as provided in Subsection (4)(b), the withdrawal of water from a groundwater basin shall be limited to the basin's safe yield.
    - (ii) Before limiting withdrawals in a groundwater basin to safe yield, the state engineer shall:
      - (A) determine the groundwater basin's safe yield; and
      - (B) adopt a groundwater management plan for the groundwater basin.
    - (iii) If the state engineer determines that groundwater withdrawals in a groundwater basin exceed the safe yield, the state engineer shall regulate groundwater rights in that groundwater basin based on the priority date of the water rights under the groundwater management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a different distribution.
    - (iv) A groundwater management plan shall include a list of each groundwater right in the proposed groundwater management area known to the state engineer identifying the water right holder, the land to which the groundwater right is appurtenant, and any identification number the state engineer uses in the administration of water rights.
  - (b) When adopting a groundwater management plan for a critical management area, the state engineer shall, based on economic and other impacts to an individual water user or a local community caused by the implementation of safe yield limits on withdrawals, allow gradual implementation of the groundwater management plan.
  - (c)
    - (i) In consultation with the state engineer, water users in a groundwater basin may agree to participate in a voluntary arrangement for managing withdrawals at any time, either before or after a determination that groundwater withdrawals exceed the groundwater basin's safe yield.
    - (ii) A voluntary arrangement under Subsection (4)(c)(i) shall be consistent with other law.
    - (iii) The adoption of a voluntary arrangement under this Subsection (4)(c) by less than all of the water users in a groundwater basin does not affect the rights of water users who do not agree to the voluntary arrangement.
- (5) To adopt a groundwater management plan, the state engineer shall:
  - (a) give notice as specified in Subsection (7) at least 30 days before the first public meeting held in accordance with Subsection (5)(b):
    - (i) that the state engineer proposes to adopt a groundwater management plan;
    - (ii) describing generally the land area proposed to be included in the groundwater management plan; and
    - (iii) stating the location, date, and time of each public meeting to be held in accordance with Subsection (5)(b);
  - (b) hold one or more public meetings in the geographic area proposed to be included within the groundwater management plan to:
    - (i) address the need for a groundwater management plan;
    - (ii) present any data, studies, or reports that the state engineer intends to consider in preparing the groundwater management plan;

- (iii) address safe yield and any other subject that may be included in the groundwater management plan;
- (iv) outline the estimated administrative costs, if any, that groundwater users are likely to incur if the plan is adopted; and
- (v) receive any public comments and other information presented at the public meeting, including comments from any of the entities listed in Subsection (7)(a)(iii);
- (c) receive and consider written comments concerning the proposed groundwater management plan from any person for a period determined by the state engineer of not less than 60 days after the day on which the notice required by Subsection (5)(a) is given;
- (d)
  - (i) at least 60 days prior to final adoption of the groundwater management plan, publish notice:
    - (A) that a draft of the groundwater management plan has been proposed; and
    - (B) specifying where a copy of the draft plan may be reviewed; and
  - (ii) promptly provide a copy of the draft plan in printed or electronic form to each of the entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and
- (e) provide notice of the adoption of the groundwater management plan.
- (6) A groundwater management plan shall become effective on the date notice of adoption is completed under Subsection (7), or on a later date if specified in the plan.
- (7)
  - (a) A notice required by this section shall be:
    - (i) published:
      - (A) once a week for two successive weeks in a newspaper of general circulation in each county that encompasses a portion of the land area proposed to be included within the groundwater management plan; and
      - (B) in accordance with Section 45-1-101 for two weeks;
    - (ii) published conspicuously on the state engineer's website; and
    - (iii) mailed to each of the following that has within its boundaries a portion of the land area to be included within the proposed groundwater management plan:
      - (A) county;
      - (B) incorporated city or town;
      - (C) a local district created to acquire or assess a groundwater right under Title 17B, Chapter 1, Provisions Applicable to All Local Districts;
      - (D) improvement district under Title 17B, Chapter 2a, Part 4, Improvement District Act;
      - (E) service area, under Title 17B, Chapter 2a, Part 9, Service Area Act;
      - (F) drainage district, under Title 17B, Chapter 2a, Part 2, Drainage District Act;
      - (G) irrigation district, under Title 17B, Chapter 2a, Part 5, Irrigation District Act;
      - (H) metropolitan water district, under Title 17B, Chapter 2a, Part 6, Metropolitan Water District Act;
      - (I) special service district providing water, sewer, drainage, or flood control services, under Title 17D, Chapter 1, Special Service District Act;
      - (J) water conservancy district, under Title 17B, Chapter 2a, Part 10, Water Conservancy District Act; and
      - (K) conservation district, under Title 17D, Chapter 3, Conservation District Act.
  - (b) A notice required by this section is effective upon substantial compliance with Subsections (7)(a)(i) through (iii).
- (8) A groundwater management plan may be amended in the same manner as a groundwater management plan may be adopted under this section.

- (9) The existence of a groundwater management plan does not preclude any otherwise eligible person from filing any application or challenging any decision made by the state engineer within the affected groundwater basin.
- (10)
- (a) A person aggrieved by a groundwater management plan may challenge any aspect of the groundwater management plan by filing a complaint within 60 days after the adoption of the groundwater management plan in the district court for any county in which the groundwater basin is found.
  - (b) Notwithstanding Subsection (9), a person may challenge the components of a groundwater management plan only in the manner provided by Subsection (10)(a).
  - (c) An action brought under this Subsection (10) is reviewed de novo by the district court.
  - (d) A person challenging a groundwater management plan under this Subsection (10) shall join the state engineer as a defendant in the action challenging the groundwater management plan.
  - (e)
    - (i) Within 30 days after the day on which a person files an action challenging any aspect of a groundwater management plan under Subsection (10)(a), the person filing the action shall publish notice of the action:
      - (A) in a newspaper of general circulation in the county in which the district court is located; and
      - (B) in accordance with Section 45-1-101 for two weeks.
    - (ii) The notice required by Subsection (10)(e)(i)(A) shall be published once a week for two consecutive weeks.
    - (iii) The notice required by Subsection (10)(e)(i) shall:
      - (A) identify the groundwater management plan the person is challenging;
      - (B) identify the case number assigned by the district court;
      - (C) state that a person affected by the groundwater management plan may petition the district court to intervene in the action challenging the groundwater management plan; and
      - (D) list the address for the clerk of the district court in which the action is filed.
    - (iv)
      - (A) Any person affected by the groundwater management plan may petition to intervene in the action within 60 days after the day on which notice is last published under Subsections (10)(e)(i) and (ii).
      - (B) The district court's treatment of a petition to intervene under this Subsection (10)(e)(iv) is governed by the Utah Rules of Civil Procedure.
    - (v) A district court in which an action is brought under Subsection (10)(a) shall consolidate all actions brought under that subsection and include in the consolidated action any person whose petition to intervene is granted.
- (11) A groundwater management plan adopted or amended in accordance with this section is exempt from the requirements in Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (12)
- (a) Recharge and recovery projects permitted under Chapter 3b, Groundwater Recharge and Recovery Act, are exempted from this section.
  - (b) In a critical management area, the artificial recharge of a groundwater basin that uses surface water naturally tributary to the groundwater basin by a local district created under Subsection 17B-1-202(1)(a)(xiii), in accordance with Chapter 3b, Groundwater Recharge and Recovery Act, constitutes a beneficial use of the water under Section 73-1-3 if:
    - (i) the recharge is done during the time the area is designated as a critical management area;

- (ii) the recharge is done with a valid recharge permit;
  - (iii) the recharged water is not recovered under a recovery permit; and
  - (iv) the recharged water is used to replenish the groundwater basin.
- (13) Nothing in this section may be interpreted to require the development, implementation, or consideration of a groundwater management plan as a prerequisite or condition to the exercise of the state engineer's enforcement powers under other law, including powers granted under Section 73-2-25.
- (14) A groundwater management plan adopted in accordance with this section may not apply to the dewatering of a mine.
- (15)
- (a) A groundwater management plan adopted by the state engineer before May 1, 2006, remains in force and has the same legal effect as it had on the day on which it was adopted by the state engineer.
  - (b) If a groundwater management plan that existed before May 1, 2006, is amended on or after May 1, 2006, the amendment is subject to this section's provisions.

Amended by Chapter 97, 2012 General Session

## **Chapter 5a Dam Safety**

### **Part 1 General Provisions**

#### **73-5a-101 Power of state engineer to regulate dams.**

- (1) The state engineer has the authority to regulate dams for the purpose of protecting public safety.
- (2) To protect life and property, the state engineer may make rules controlling the construction and operation of dams, including rules controlling:
  - (a) design;
  - (b) maintenance;
  - (c) repair;
  - (d) removal; and
  - (e) abandonment.
- (3) The state engineer may by rule exempt from this chapter any dam that:
  - (a) impounds less than 20 acre-feet of water and does not constitute a threat to human life if it fails; or
  - (b) does not constitute a threat to human life and would result in only minor damage to property of the owner if it fails.

Enacted by Chapter 319, 1990 General Session

#### **73-5a-102 Chapter does not apply to certain federal dams and reservoirs.**

This chapter does not apply to works owned by the United States Bureau of Reclamation. However, the Bureau of Reclamation shall file plans, drawings, and specifications of its works with the state engineer.

Amended by Chapter 264, 1996 General Session

**73-5a-103 Liability of owner or operator.**

- (1) Nothing in this chapter shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam or reservoir.
- (2) The owner or operator of a dam or reservoir may not be held to be strictly liable for any act or omission incident to the construction, ownership, or operation of the dam or reservoir.

Amended by Chapter 264, 1996 General Session

**73-5a-104 Qualifications of persons designing dams.**

Each plan for the construction, enlargement, repair, alteration, or removal of any dam in this state shall be prepared by a qualified engineer who is:

- (1) licensed in Utah; and
- (2) experienced in dam design and construction.

Enacted by Chapter 319, 1990 General Session

**73-5a-105 Independent consultants -- Owner to pay costs.**

- (1) The state engineer may require the owner of a dam or proposed dam to obtain the services of an independent consultant or team of consultants approved by the state engineer to consult regarding the adequacy of the design, construction, or operation of the dam if safety considerations pertaining to the design, construction, or operation of the dam warrant an independent review.
- (2) The state engineer shall make rules specifying:
  - (a) the safety considerations that will be considered in determining if an independent review is required;
  - (b) the requisite qualifications and experience of the independent consultants; and
  - (c) the timing of the consultants' review so that their recommendations are made in a timely manner.
- (3)
  - (a) The independent consultants shall be considered to be the agents of the owner of the dam.
  - (b) The costs of the independent consultants' services shall be paid by the owner of the dam.
  - (c) The owner of the dam may require the independent consultants to consider other issues, in addition to safety considerations, such as:
    - (i) design selections or alternatives;
    - (ii) site selection;
    - (iii) cost effectiveness; or
    - (iv) other tasks as defined by the contract.

Enacted by Chapter 319, 1990 General Session

**73-5a-106 Dams classified according to hazard and use.**

- (1) Dams shall be classified according to hazard and use.
- (2) Hazard classifications are as follows:

- (a) high hazard - those dams which, if they fail, have a high probability of causing loss of human life or extensive economic loss, including damage to critical public utilities;
  - (b) moderate hazard - those dams which, if they fail, have a low probability of causing loss of human life, but would cause appreciable property damage, including damage to public utilities; and
  - (c) low hazard - those dams which, if they fail, would cause minimal threat to human life, and economic losses would be minor or limited to damage sustained by the owner of the structure.
- (3) Use classifications are as follows:
- (a) water storage - dams which impound water for prolonged periods, including those built for irrigation, power generation, water supply, aquatic culture, and recreation;
  - (b) flood control - dams constructed to operate only during significant runoff events and which impound water for a small percentage of time, including those built for flood control or sediment control and debris basins;
  - (c) tailings - dams in which a large component of the material impounded consists of saturated solids; and
  - (d) other - dams which impound a minimal amount of water or where the head behind the dam is minimal, including stock ponds, wash water ponds, recirculated process water ponds, regulating reservoirs, and diversion dams.

Amended by Chapter 264, 1996 General Session

## **Part 2**

### **Procedures for the Approval of Dam Construction Plans**

#### **73-5a-201 Approval of state engineer necessary to construct, alter, or abandon dams.**

No person may construct, enlarge, repair, alter, remove, or abandon any dam or reservoir without obtaining written approval from the state engineer. Routine maintenance of the structure does not require approval from the state engineer.

Enacted by Chapter 319, 1990 General Session

#### **73-5a-202 Submission of plans.**

- (1) Before a dam is constructed, enlarged, repaired, altered, removed, or abandoned, plans for the work shall be submitted to the state engineer for his approval, unless the dam:
  - (a) impounds less than 20 acre-feet of water; and
  - (b) is not classified as a high hazard structure under Section 73-5a-106.
- (2)
  - (a) The plans shall be submitted 90 days before:
    - (i) awarding the construction contract; or
    - (ii) the commencement of construction, if the owner constructs the dam.
  - (b) The state engineer may shorten the 90-day review period if the owner and the design engineer submit satisfactory preliminary plans and design reports for review.
- (3) The state engineer may waive the requirement of plans if it can be demonstrated that failure of the proposed dam:
  - (a) does not constitute a threat to human life; and



- (b) may result in only minor property damage that would be limited to property held by the owner of the structure.

Amended by Chapter 177, 2009 General Session

**73-5a-203 Review of plans.**

- (1) The state engineer shall establish a formal written procedure for the review of plans submitted pursuant to Section 73-5a-202. Plans shall be reviewed according to:
  - (a) design criteria which the state engineer shall specify in rules; and
  - (b) data or criteria generally accepted by the general dam design community.
- (2) Upon review of the plans, the state engineer will:
  - (a) approve them with appropriate conditions;
  - (b) reject them; or
  - (c) return them for correction.
- (3) The state engineer shall document each review indicating:
  - (a) how the plans were reviewed; and
  - (b) his evaluation of the plans.

Enacted by Chapter 319, 1990 General Session

**73-5a-204 Application for approval.**

- (1) If the submission of plans is not required by Subsection 73-5a-202(1) or is waived pursuant to Subsection 73-5a-202(3), approval to construct, enlarge, repair, alter, remove, or abandon the dam must be obtained by submitting an application to the state engineer.
- (2) The application shall contain:
  - (a) the location of the dam;
  - (b) physical dimensions of the dam;
  - (c) water rights attached to the dam; and
  - (d) any other information or drawings as required by the state engineer to evaluate the application.
- (3) Upon review, the application will be approved, rejected, or approved with conditions.

Amended by Chapter 5, 1991 General Session

**73-5a-205 Approvals void after one year if construction delayed -- Exceptions.**

- (1) Any approval granted under Section 73-5a-203 is void one year after the date of approval if construction has not started.
- (2) The state engineer may extend the approval in one year increments:
  - (a) upon a showing of reasonable cause for delay; and
  - (b) provided state-of-the-art design criteria has not changed in the intervening period.

Enacted by Chapter 319, 1990 General Session

**Part 3**  
**Construction Inspections**

**73-5a-301 Inspections to insure compliance with plans -- Duties and costs of owners --**

**Weekly reports.**

- (1) During construction, enlargement, repair, alteration, or removal of any dam:
  - (a) the state engineer, his staff, or an independent consultant shall make periodic inspections of the work for the purpose of ascertaining compliance with the approved plans and specifications; and
  - (b) the owner of the dam shall:
    - (i) conduct tests that the state engineer determines are necessary;
    - (ii) provide adequate supervision of the work by an engineer licensed by the state who has experience in dam design and construction; and
    - (iii) disclose information sufficient to enable the state engineer to determine that the work is being done in conformance with the approved plans and specifications.
- (2) Costs of any work or tests required by the state engineer shall be paid by the owner of the dam.
- (3) The engineer who is supervising the work pursuant to Subsection (1)(b)(ii) is required to submit a report weekly to the state engineer. Each report shall show the work accomplished during the previous week and summarize the results of any material testing.

Enacted by Chapter 319, 1990 General Session

**73-5a-302 Failure to conform to plans.**

- (1) If at any time during construction, enlargement, repair, alteration, or removal of any dam the state engineer finds that the work is not being done in accordance with the approved plans and specifications, he shall:
  - (a) notify the owner of the failure to comply;
  - (b) order the owner to effect compliance with the plans and specifications; or
  - (c) approve the modification to the approved plans and specifications.
- (2) The state engineer may order that no further work be done until compliance has been effected and approved by him.
- (3) A failure to comply with the approved plans and specifications shall render the approval subject to revocation by the state engineer. If compliance is not effected in a reasonable time, the state engineer may order the incomplete structure removed in order to eliminate any safety hazard to life or property.

Enacted by Chapter 319, 1990 General Session

**73-5a-303 Circumstances under which the plan must be modified or the approval revoked.**

- (1) If at any time during construction, enlargement, repair, alteration, or removal of a dam the state engineer finds that the conditions encountered differ appreciably from those assumed in the plan, he may require the plans to be modified.
- (2) If conditions are revealed which will not permit the construction of a safe dam, the state engineer shall revoke the approval.

Enacted by Chapter 319, 1990 General Session

**73-5a-304 Final inspection.**

- (1) Following construction and prior to impounding any water, the state engineer shall undertake a final inspection of the project.
- (2) A written final approval of the project shall be issued if:

- (a) the state engineer determines that:
    - (i) the project was constructed in accordance with plans approved by the state engineer under Sections 73-5a-203 and 73-5a-303; and
    - (ii) during construction, inspections and tests were conducted as required by Section 73-5a-301; and
  - (b) the emergency action plan and standard operating plan meet the requirements set forth in rules adopted by the state engineer.
- (3)
- (a) The state engineer may require the owner to:
    - (i) submit a formal operating plan for the initial filling of the reservoir; or
    - (ii) follow certain procedures during the initial filling of the reservoir.
  - (b) Failure to submit the operating plan or follow the specified procedures shall result in revocation of the final approval.

Enacted by Chapter 319, 1990 General Session

## **Part 4 Operations**

### **73-5a-401 Records and reports.**

The state engineer may make rules requiring the owner of any dam to:

- (1) maintain records pertaining to the construction, operation, or maintenance of the dam; or
- (2) submit:
  - (a) reports to the state engineer regarding maintenance, operation, or instrumentation readings; or
  - (b) any other data considered necessary by the state engineer.

Enacted by Chapter 319, 1990 General Session

### **73-5a-402 Standard operating plans required.**

The owner of each dam shall prepare a standard operating plan for the dam. In the case of a dam in operation prior to May 1, 1991, the standard operating plan shall be submitted to the state engineer for his approval by May 1, 1994. In the case of any dam beginning operations on or after May 1, 1991, the standard operating plan shall be submitted to the state engineer for his approval prior to the final inspection.

Enacted by Chapter 319, 1990 General Session

### **73-5a-403 State engineer to specify contents of standard operating plans.**

By May 1, 1991, the state engineer shall adopt rules specifying the contents of standard operating plans.

Enacted by Chapter 319, 1990 General Session

## **Part 5**

## Inspection of Dams

### **73-5a-501 State engineer to inspect dams.**

- (1) The state engineer shall inspect each dam that in the state engineer's opinion:
  - (a) poses a threat to human life; or
  - (b) could cause significant property damage if the dam failed.
- (2) An inspection required by Subsection (1) shall occur:
  - (a) at increments commensurate with the relative risk to life and property; and
  - (b) not less than once every five years.
- (3) The state engineer may inspect a dam that is not exempt from regulation by this chapter.

Amended by Chapter 177, 2009 General Session

### **73-5a-502 Legislative findings -- Immunity from suit -- State engineer to set minimum standards for existing high hazard dams -- Exceptions -- Investigations and plans for compliance with minimum standards.**

- (1) The Legislature finds that:
  - (a) it is in the interest of the people of the state to improve the safety of existing dams;
  - (b) mutual irrigation companies and water users associations cannot afford to bring dams into conformance with the state's current minimum safety standards without financial assistance from the state;
  - (c) due to limited financial, physical, and human resources, it is necessary to establish priorities for the upgrade of dams; and
  - (d) the state and its officers and employees are immune from suit for any injury or damage resulting from the exercise or performance or the failure to exercise or perform any function pursuant to this chapter.
- (2) The state engineer shall establish minimum standards for existing high hazard dams by rule. The standards for existing high hazard dams may differ from the design criteria established for new construction.
- (3) No seismic standards shall be established for existing high hazard dams within the flood control use classification.
- (4)
  - (a) In implementing this section, the state engineer will develop a priority list of high hazard dams. The list will be determined by calculating the relative anticipated breach flows in the event of a dam failure. The dams will be ranked from the largest breach flow to the smallest for all high hazard dams.
  - (b) The state engineer shall investigate annually 25 dams on the priority list in order of their ranking to determine in what areas they are deficient or do not meet minimum standards.
  - (c) Once a determination is made, the owner will be notified that the owner will be required to undertake investigations to determine requirements necessary to bring the dam into compliance with minimum standards.
  - (d) Once the owner has been informed of the deficiencies of the dam, the owner will be given 90 days to respond, in writing, as to what steps the owner is taking to investigate the deficiencies and the time required to complete the investigations.
  - (e) The state engineer will review the proposal, and if it appears reasonable, will approve it.

- (5) The state engineer may not require any mutual irrigation company or water users association to upgrade a dam in conformance with minimum standards, unless a grant to pay for 80% of the costs is made available from the Board of Water Resources.

Amended by Chapter 264, 1996 General Session

**73-5a-503 Owners required to perform maintenance -- Orders to protect life and property.**

- (1) Following an inspection, the state engineer shall specify what maintenance is necessary to keep the dam and appurtenant structures in satisfactory condition, and the owner of the dam shall be responsible for that maintenance.
- (2) Depending upon the severity of problems noted during an inspection, the state engineer may issue orders for:
  - (a) engineering studies;
  - (b) repairs;
  - (c) storage limitations;
  - (d) removal of the dam;
  - (e) breaching of the dam; or
  - (f) any other remedy the state engineer determines is appropriate to protect life and property.

Enacted by Chapter 319, 1990 General Session

## **Part 6 Emergencies**

**73-5a-601 Emergency action plans required.**

- (1) The owner of any dam which, in the state engineer's opinion, may pose a threat to life or cause significant damage to property if it fails shall prepare a plan of action to be implemented when an emergency involving the dam occurs.
- (2) In the case of a dam in operation prior to May 1, 1991, the emergency action plan shall be submitted to the state engineer for his approval by May 1, 1994.
- (3) In the case of a dam beginning operations on or after May 1, 1991, the emergency action plan shall be submitted to the state engineer prior to the date of the final inspection.

Enacted by Chapter 319, 1990 General Session

**73-5a-602 State engineer to specify contents of emergency action plans.**

By May 1, 1991, the state engineer shall adopt rules specifying the contents of an emergency action plan.

Enacted by Chapter 319, 1990 General Session

**73-5a-603 Emergency power of state engineer.**

- (1) The state engineer may intervene during dam emergencies if the owner of the dam cannot be found or is unwilling to take appropriate action. Intervention may occur only when, in the judgment of the state engineer, the condition of any dam is so dangerous to the safety of life or property as to not permit time for issuance and enforcement of any order.

- (2) Emergency actions may include:
  - (a) alerting appropriate public safety entities of the problem;
  - (b) draining the reservoir;
  - (c) hiring personnel or leasing equipment to undertake emergency operations; or
  - (d) taking other steps considered necessary to safeguard life and property.
- (3) Any expenses incurred in undertaking emergency operations shall be reimbursed by the owner of the dam.

Enacted by Chapter 319, 1990 General Session

## **Part 7**

### **Enforcement and Penalties**

#### **73-5a-701 Notice of violation -- Order for corrective action.**

- (1) If the state engineer determines that any person is violating any requirement of this chapter or the rules adopted under this chapter, the state engineer shall serve written notice upon the alleged violator which:
  - (a) specifies the violation; and
  - (b) alleges the facts constituting the violation.
- (2) After serving notice as required in Subsection (1), the state engineer may issue an order for necessary corrective action and file an action in the appropriate district court.

Enacted by Chapter 319, 1990 General Session

#### **73-5a-702 Civil penalties -- Costs -- Civil liability.**

- (1) Any person who violates this chapter or any lawful notice or order issued pursuant to this chapter shall be assessed a penalty not to exceed \$5,000 per violation in a civil proceeding.
- (2) In the case of a continuing violation, each day that the violation continues constitutes a separate and distinct offense.
- (3) Any person who violates this chapter shall be liable for any expenses incurred by the state engineer in abating any violation of this chapter.
- (4) A penalty assessment under this chapter does not relieve the person assessed from civil liability for claims arising out of any act which was also a violation.

Enacted by Chapter 319, 1990 General Session

## **Chapter 6**

### **Withdrawal of Unappropriated Waters**

#### **73-6-1 Suspension of right to appropriate -- By proclamation of governor.**

For the purpose of preserving the surplus and unappropriated waters of any stream or other source of water supply for use by irrigation districts and organized agricultural water users, or for any use whatsoever, when in the judgment of the governor and the state engineer the welfare of

the state demands it, the governor by proclamation may, upon the recommendation of the state engineer, suspend the right of the public to appropriate such surplus or unappropriated waters.

No Change Since 1953

**73-6-2 Restoration by proclamation -- Priority of applications.**

- (1) Waters withdrawn from appropriation under this chapter may be restored by proclamation of the governor upon the recommendation of the state engineer.
- (2) Such proclamation shall not become effective until notice thereof has been published:
  - (a) at least once a week for three successive weeks in a newspaper of general circulation within the boundaries of the river system or water source within which the waters so to be restored are situated; and
  - (b) in accordance with Section 45-1-101 for three weeks.
- (3) Applications for appropriations shall not be filed during the time such waters are withdrawn from appropriation; provided, that after the first publication of notice aforesaid applications may be deposited with the state engineer and at the time such proclamation becomes effective the engineer shall hold public hearings, giving all applicants notice, to determine which applications so filed during the period of publication of such notice are most conducive to the public good, and shall file such applications in order of priority according to such determination.

Amended by Chapter 388, 2009 General Session

## **Chapter 10**

### **Board of Water Resources - Division of Water Resources**

**73-10-1 State's policy -- Creation of revolving fund -- General construction of act.**

- (1) The Legislature of the state of Utah having heretofore declared by Section 73-1-1, Utah Code Annotated 1953, that, "All waters of this state, whether above or under the ground are hereby declared to be the property of the public, subject to all existing rights to the use thereof"; and further, by Section 73-1-3, Utah Code Annotated 1953, that "Beneficial use shall be the basis, the measures and the limit of all rights to the use of water in this state"; and further, by Section 17B-2a-1002 that the policy of the state is, "To obtain from water in Utah the highest duty for domestic uses and irrigation of lands in Utah within the terms of interstate compacts or otherwise," now by this act reiterates and reaffirms such declaration of the public policy of the state of Utah.
- (2) It is further declared to be the policy of this chapter and of the state of Utah, and the legislature recognizes:
  - (a) that by construction of projects based upon sound engineering the waters within the various counties of the state of Utah can be saved from waste and increased in efficiency of beneficial use by 25% to 100%;
  - (b) that because of well-known conditions such as low prices and lack of market for farm products, particularly the inefficiency of water supply because of lack of late season water and consequent lack of financial strength, water users in small communities have been unable to build projects that would provide full conservation and beneficial use for the limited water supply in this semiarid land;

- (c) that water, as the property of the public, should be so managed by the public that it can be put to the highest use for public benefit;
  - (d) that Congress of the United States has provided for the building of larger water conservation projects throughout the semiarid states, payment of the capital costs without interest to be made by the water users upon the basis of a fair portion of crop returns;
  - (e) that the Congress of the United States has established in the department of interior and in the department of agriculture, various agencies having authority to develop, protect, and aid in putting to beneficial use the land and water resources of the United States and to cooperate with state agencies having similar authority;
  - (f) that the interests of the state of Utah require that means be provided for close cooperation between all state and federal agencies to the end that the underground waters and waters of the small streams of the state, and the lands thereunder, can be made to yield abundantly and increase the income and well-being of the citizens of the state;
  - (g) that it appears to be sound public policy for the state of Utah to provide a revolving fund, to be increased at each legislative session, to the end that every mountain stream and every water resource within the state can be made to render the highest beneficial service, such fund to be so administered that no project will be built except upon expert engineering, financial, and geological approval.
- (3) All of the provisions of this chapter shall be liberally construed so as to carry out and put into force and effect the purposes and policies as hereinabove set forth.

Amended by Chapter 329, 2007 General Session

#### **73-10-1.5 Board of Water Resources -- Creation -- Transfer of powers and duties.**

There is created within the Department of Natural Resources a Board of Water Resources which, except as otherwise provided in this act, shall assume all of the policy-making functions, powers, duties, rights and responsibilities of the Utah water and power board, together with all functions, powers, duties, rights and responsibilities granted to the Board of Water Resources by this act. The Board of Water Resources shall be the policy-making body of the Division of Water Resources. Except as otherwise provided in this act, whenever reference is made in Title 73, Water and Irrigation, or any other provision of law, to the Utah Water and Power Board, it shall be construed as referring to the Board of Water Resources where such reference pertains to policy-making functions, powers, duties, rights and responsibilities; but in all other instances such reference shall be construed as referring to the Division of Water Resources.

Enacted by Chapter 176, 1967 General Session

#### **73-10-2 Board of Water Resources -- Members -- Appointment -- Terms -- Vacancies.**

- (1)
  - (a) The Board of Water Resources shall be comprised of eight members to be appointed by the governor with the consent of the Senate.
  - (b) In addition to the requirements of Section 79-2-203, not more than four members shall be from the same political party.
- (2) One member of the board shall be appointed from each of the following districts:
  - (a) Bear River District, comprising the counties of Box Elder, Cache, and Rich;
  - (b) Weber District, comprising the counties of Weber, Davis, Morgan, and Summit;
  - (c) Salt Lake District, comprising the counties of Salt Lake and Tooele;
  - (d) Provo River District, comprising the counties of Juab, Utah, and Wasatch;



- (e) Sevier River District, comprising the counties of Millard, Sanpete, Sevier, Piute, and Wayne;
  - (f) Green River District, comprising the counties of Daggett, Duchesne, and Uintah;
  - (g) Upper Colorado River District, comprising the counties of Carbon, Emery, Grand, and San Juan; and
  - (h) Lower Colorado River District, comprising the counties of Beaver, Garfield, Iron, Washington, and Kane.
- (3)
- (a) Except as required by Subsection (3)(b), all appointments shall be for terms of four years.
  - (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
  - (c) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term with the consent of the Senate and shall be from the same district as such person.
- (4) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

**73-10-3 Organization of board -- Interstate conferences -- Designation of representative -- Salary -- Compacts -- Ratification required.**

The board shall elect a chairman, one or more vice-chairmen, who shall be members of the board, and shall establish its own rules of organization and procedure.

The board, with the approval of the executive director of natural resources and the governor, shall designate a representative who may be one of its members to represent the state of Utah in all interstate conferences between the state of Utah and one or more sister states held for the purpose of entering into compacts between such states for the division of the waters of interstate rivers, lakes, or other sources of water supply, and to represent the state of Utah upon all commissions or other governing bodies provided for by any compacts which have been or may hereafter be entered into between the state of Utah and one or more sister states. No such compact shall, however, become binding upon the state of Utah until it has been ratified and approved by the Legislature of the state of Utah and the legislatures of other states which are parties thereto.

In acting as such representative of the state of Utah, the representative so acting shall act under the supervision of the governor, through the executive director of natural resources and of the Board of Water Resources. The director of the Division of Finance shall fix the salary to be paid to the representative while he is acting in this capacity.

Amended by Chapter 320, 1983 General Session

**73-10-4 Powers and duties of board.**

The board shall have the following powers and duties:

- (1) To authorize studies, investigations, and plans for the full development, and utilization and promotion of the water and power resources of the state, including preliminary surveys, stream

gauging, examinations, tests, and other estimates either separately or in consultation with federal, state and other agencies.

- (2) To enter into contracts subject to the provisions of this act for the construction of conservation projects which in the opinion of the board will conserve and utilize for the best advantage of the people of this state the water and power resources of the state, including projects beyond the boundaries of the state of Utah located on interstate waters when the benefit of such projects accrues to the citizens of the state.
- (3) To sue and be sued in accordance with applicable law.
- (4) To supervise in cooperation with the governor and the executive director of natural resources all matters affecting interstate compact negotiations and the administration of such compacts affecting the waters of interstate rivers, lakes and other sources of supply.
- (5) To contract with federal and other agencies and with the National Reclamation Association and to make studies, investigations and recommendations and do all other things on behalf of the state for any purpose which relates to the development, conservation, protection and control of the water and power resources of the state.
- (6) To consult and advise with the Utah Water Users' Association and other organized water users' associations in the state.
- (7) To consider and make recommendations on behalf of the state of Utah of reclamation projects or other water development projects for construction by any agency of the state or United States and in so doing recommend the order in which projects shall be undertaken.
- (8) Nothing contained herein shall be construed to impair or otherwise interfere with the authority of the state engineer granted by Title 73, Water and Irrigation, except as herein specifically otherwise provided.

Amended by Chapter 198, 1969 General Session

**73-10-5 Selection of project by board -- Preparation of plans and estimate of cost --  
Contracts by board.**

When a project to be constructed with money made available from the funds created by Section 73-10-8 has been selected by the board, which in its opinion, will conserve the water resources of this state for the best interests of the citizens of the state, the board shall cause plans and cost estimates of such project to be prepared. Such plans and cost estimates shall then be referred to the director of the Division of Finance who shall determine whether or not funds are available for the construction of the project. If the director of the Division of Finance approves the project so far as the availability of funds is concerned, the Utah water and power board shall then enter into a contract or contracts for the construction of the project. Such contracts shall not be binding upon the state until approved by the director of the Division of Finance from the standpoint of whether or not the cost of the work is reasonable and whether the contract has been entered into under the terms and conditions most advantageous to the state.

Amended by Chapter 320, 1983 General Session

**73-10-6 Making water available to citizens of state -- Assessment of charges against water users -- Water Resources Construction Fund.**

The Board of Water Resources may make available for the use of the citizens of the state who are, in its opinion, best able to utilize the same, any or all water and power conserved by any of the projects to which the state may have title and may enter into contracts for the use of said water and power with individuals or with organizations composed of citizens of the state of Utah. The

board may assess against any person using such water and power such charges as, in the opinion of the board, are necessary and reasonable for the maintenance of the project and return to the state the actual costs of the project over such term of years as the board may deem it advisable. Any amount collected as charges over and above the amount necessary to maintain any particular project shall become part of the Water Resources Construction Fund.

Amended by Chapter 169, 1988 General Session

**73-10-7 Title to projects -- Contractual powers of board.**

Title of all projects constructed with funds made available by Section 73-10-8 hereof under the terms of this act shall become vested in the state of Utah. The board is empowered to enter into contracts which are, in its opinion, necessary for the maintenance and continued operation of such projects.

No Change Since 1953

**73-10-8 Water Resources Construction Fund -- Creation and contents of fund -- Use -- Investigation Account created -- Interest -- Retainage -- Loans and grants for dam safety work.**

- (1) There is created the Water Resources Construction Fund, which consists of:
  - (a) money appropriated or otherwise made available to it by the Legislature;
  - (b) money from the sale or management of the 500,000 acres of land selected for the establishment of reservoirs under Section 12 of the Utah Enabling Act;
  - (c) charges assessed against water and power users pursuant to Section 73-10-6; and
  - (d) interest accrued pursuant to Subsection (5).
- (2) The board may authorize the use of money in the fund for the following purposes:
  - (a) to develop water conservation projects, including paying the costs of construction, engineering, investigation, inspection, and other related expenses;
  - (b) to provide loans and grants to dam owners to conduct dam safety studies;
  - (c) to provide loans and grants to dam owners:
    - (i) to upgrade dams in conformance with the minimum standards established by the state engineer in rules; or
    - (ii) for nonstructural solutions developed to meet minimum standards or lower hazard ratings that are approved by the state engineer, including the purchase of habitable structures, purchase of flood easements, and installation of early warning systems; or
  - (d) as otherwise provided by law.
- (3) The board may provide for the repayment of the costs of investigation, engineering, and inspection out of the first money to be paid under a contract for the construction of a water project. The money repaid shall be deposited into a subaccount within the Water Resources Construction Fund known as the Investigation Account, to be used by the board for the purpose of making investigations for the development and use of the water resources of the state.
- (4) Contributions of money, property, or equipment may be received from any political subdivision of the state, federal agency, water users' association, person, or corporation for use in making investigations, constructing projects, or otherwise carrying out the purposes of this section.
- (5) All money deposited into the Water Resources Construction Fund shall be invested by the state treasurer with interest accruing to the Water Resources Construction Fund.

- (6) If any payment on a contract with a private contractor to construct a project funded by the Water Resources Construction Fund is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.
- (7) Loans to dam owners for dam safety studies and to upgrade dams in conformance with minimum standards shall be secured by taking water rights associated with the dam.
- (8) The following restrictions apply to any grant made to a dam owner for a dam safety study:
  - (a) only a nonprofit mutual irrigation company or a water users association is eligible to receive a grant;
  - (b) the dam safety study shall be required by the state engineer pursuant to Section 73-5a-503; and
  - (c) the amount of any grant shall be limited to up to 50% of the costs of the dam safety study.
- (9)
  - (a) The board may provide grants to mutual irrigation companies and water users associations to upgrade dams in conformance with minimum standards of the state engineer. Each grant authorized by the board for the upgrade of a dam of a mutual irrigation company or water users association in conformance with the minimum standards shall be sufficient to pay for 80% of the costs to upgrade the dam.
  - (b)
    - (i) Pursuant to guidelines specified in Subsection (9)(b)(ii), the board may provide loans or grants, or both, to entities other than mutual irrigation companies and water users associations to upgrade dams in conformance with minimum standards of the state engineer.
    - (ii) In determining the type of financial assistance to be provided to an entity other than a mutual irrigation company or water users association, the board shall consider the dam owner's ability to pay and may consider other factors including:
      - (A) the degree of hazard;
      - (B) the threat to public safety;
      - (C) the state engineer's priority list of dams;
      - (D) the cost effectiveness of the restoration;
      - (E) the number of potential and actual applications for financial assistance; and
      - (F) the funds available.
- (10) The amount of money in the fund that may be used for grants for dam safety studies shall be limited to the amount of money appropriated to the fund for that purpose.
- (11) The board shall consult with the state engineer in establishing a priority list of dams to be upgraded with money in the fund.
- (12) A dam owner who has initiated or completed construction approved by the state engineer to upgrade the dam in conformance with minimum standards may apply for a grant or loan from the board as reimbursement for those construction expenditures.

Amended by Chapter 342, 2011 General Session

**73-10-11 Counsel to board and representative -- Utilization of other departments -- Duty of executive secretary of board to collect on water contracts.**

The attorney general shall act as legal counsel to the board, and to its representative as hereinbefore provided for, and the board shall wherever practicable utilize the services and facilities of other departments of the state government. The executive secretary of the Utah water and power board shall be charged with the duty of collecting any and all amounts due on contracts with water users.

Amended by Chapter 133, 1953 Special Session C

**73-10-12 Appropriations.**

There is appropriated out of any money from the state treasury the sum of \$200,000 for the administration of this act. There is further appropriated the sum of \$1,000,000 to become a part of the Utah water and power board construction fund.

No Change Since 1953

**73-10-13 Appropriation for loan fund.**

There is appropriated out of the General Fund not otherwise appropriated, the sum of \$1,000,000 to the Utah water and power board as a permanent increase to the loan fund of Utah water and power board.

Enacted by Chapter 199, 1963 General Session

**73-10-15 State water plan -- Agencies to cooperate in formulation of plan.**

All other state agencies shall cooperate with the Division of Water Resources in the formulation of a state water plan and the division is to use information, including water resources data, which has been or will be assembled by other state agencies, the United States government, various colleges and universities of the state, or any other source which can profitably contribute to the development of a state water plan.

Amended by Chapter 176, 1967 General Session

**73-10-16 State water plan -- Payment for special studies and investigations.**

Special studies or investigations needed for development of a water plan which might be requested of other agencies, but not included in the budgets or the work programs of such agencies, may be paid for from funds hereby appropriated for the formulation of a state water plan.

Enacted by Chapter 178, 1963 General Session

**73-10-17 State water plan -- Authority of other agencies not impaired.**

Nothing contained herein shall be construed to impair or otherwise interfere with the authority heretofore granted to other agencies, institutions or subdivisions of the state of Utah.

Enacted by Chapter 178, 1963 General Session

**73-10-18 Division of Water Resources -- Creation -- Power and authority.**

There is created the Division of Water Resources, which shall be within the Department of Natural Resources under the administration and general supervision of the executive director of natural resources and under the policy direction of the Board of Water Resources. The Division of Water Resources shall be the water resource(s) authority for the state of Utah, shall assume all of the functions, powers, duties, rights and responsibilities of the Utah water and power board except those which are delegated to the board by this act and is vested with such other functions, powers, duties, rights and responsibilities as provided in this act and other law.

Amended by Chapter 198, 1969 General Session

**73-10-19 Director's power and authority.**

The director shall be the executive and administrative head of the Division of Water Resources and shall be a person selected with special reference to his training, experience and interest in the field of water conservation and development.

The director of the Division of Water Resources shall administer the Division of Water Resources and shall succeed to all of the powers and duties conferred upon the executive secretary of the Utah water and power board pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources. The director shall have the power within policies established by the Board of Water Resources to:

- (1) make studies, investigations, and plans for the full development and utilization and promotion of the water and power resources of the state, including preliminary surveys, stream gauging, examinations, tests, and other estimates either separately or in consultation with federal, state and other agencies;
- (2) initiate and conduct water resource investigations, surveys and studies, prepare plans and estimates, make reports thereon, and perform necessary work to develop an over-all state water plan;
- (3) file applications in the name of the division for the appropriation of water. All pending water applications heretofore filed in behalf of the state or any agency thereof for the use and benefit of the state are transferred to the board, and it is authorized to take such action thereon as it may deem proper;
- (4) take all action necessary to acquire or perfect water rights for projects sponsored by the board;
- (5) accept, execute and deliver deeds and all other conveyances.

Amended by Chapter 318, 1983 General Session

**73-10-20 Loans for water systems -- Legislative declaration.**

The legislature recognizes and declares that the development, protection and maintenance of adequate and safe water supplies for human consumption is vital to public health, safety and welfare; that there exists within the state a need to assist cities, towns, improvement districts, and special service districts in providing an adequate and safe water supply for those users from municipal and district systems; that the acquisition or construction of systems and the improvement and extension of existing systems, based on proper planning and sound engineering, will not only provide safer water supplies, but will also serve to ensure that the water resources of the state are used in an efficient manner and will avoid wasteful practices.

Amended by Chapter 281, 1977 General Session

**73-10-21 Loans for water systems -- Eligible projects.**

This chapter shall apply to all eligible projects of incorporated cities and towns, local districts under Title 17B, Limited Purpose Local Government Entities - Local Districts, assessment areas under Title 11, Chapter 42, Assessment Area Act, and special service districts under Title 17D, Chapter 1, Special Service District Act. Eligible projects are those for the acquisition, improvement, or construction of water systems used for the production, supply, transmission, storage, distribution, or treatment of water for cities, towns, metropolitan water districts, water conservancy districts, improvement districts, special improvement districts, or special service districts, or the improvement or extension of such systems.

Amended by Chapter 360, 2008 General Session

**73-10-22 Water Resources Cities Water Loan Fund -- Annual appropriation -- Interest.**

- (1) Beginning with the fiscal year ending June 30, 1978, the Legislature shall provide an annual appropriation from the General Fund from liquor control profits to the Board of Water Resources to make the loans provided for in Sections 73-10-20, 73-10-21, and 73-10-23. The money appropriated by the Legislature shall be deposited in a fund known as the Water Resources Cities Water Loan Fund.
- (2) All money deposited into the Water Resources Cities Water Loan Fund shall be invested by the state treasurer with interest accruing to the Water Resources Cities Water Loan Fund.

Amended by Chapter 183, 1995 General Session

**73-10-23 Loans for water systems -- Board of Water Resources authority -- Procedure.**

- (1) The Board of Water Resources is authorized to make loans to cities, towns, metropolitan water districts, water conservancy districts, improvement districts, special improvement districts, or special service districts within the state for the acquisition or construction of new or existing water systems or the improvement or extension of those systems from funds appropriated for the purpose of this chapter.
- (2)
  - (a) Cities, towns, or districts which participate in this program shall submit an application for funds to the Board of Water Resources.
  - (b) The application may request a loan to cover all or part of the cost of an eligible project.
  - (c) Requests for loans shall be submitted in a form and shall include information as the board prescribes.
- (3)
  - (a) The board shall establish criteria for determining eligibility for loans and shall determine appropriate priorities among projects.
  - (b) Funds received from the repayment of loans shall be added to this special fund and be available for additional loans under the administration of the board.
  - (c) In determining priorities for eligible projects, the board shall consider:
    - (i) probable growth of population due to actual or prospective economic development in an area;
    - (ii) possible additional sources of state and local revenue;
    - (iii) opportunities for expanded employment;
    - (iv) present or potential health hazards;
    - (v) water systems which do not meet minimum state standards;
    - (vi) cities, towns, or districts which have insufficient water to meet current demands;
    - (vii) feasibility and practicality of the project;
    - (viii) per capita cost of the project;
    - (ix) per capita income of the residents in the area;
    - (x) the borrowing capacity of the city, town, or district and its ability to sell bonds in the open market; and
    - (xi) the availability of federal funds for the project.
- (4)
  - (a) The board shall consult with the Governor's Advisory Council on Community Affairs in the establishment of priorities but that advice is not binding upon the board.

- (b) If an application is rejected, the board shall notify the applicant stating the reasons for the rejection.
- (5) The Board of Water Resources shall review the plans and specifications for the project prior to approval and may condition approval and the availability of funds on assurances the board considers necessary to ensure that the proceeds of the loan will be used to pay the cost of the project and that the project will be completed.
- (6) Any loan shall specify the terms for repayment and may be evidenced by general obligation bonds, revenue bonds, special assessment bonds, or other bonds or obligations legally issued by the appropriate city, town, metropolitan water district, water conservancy district, improvement district, special improvement district, or special service district and purchased by the board pursuant to the authority for the issuance that exists at the time of the loan.
- (7)
  - (a) Upon approval of an application, the board shall advise the applicant and may provide funds as a loan to cover all or part of the costs of eligible projects.
  - (b) Costs of an eligible project may include all costs of acquisition and construction as well as costs incurred for preliminary planning to determine the economic and engineering feasibility of a proposed project, the engineering, architectural, legal, fiscal, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary to the project and its financing; the cost of erection, building, acquisition, modification, improvement, or extension of water system facilities and the inspection and supervision of the construction of such facilities.
- (8) No loan shall include any project costs for which the applicant receives federal financial assistance, other than federal loans which must be repaid by the applicant.

Amended by Chapter 306, 2007 General Session

**73-10-24 Water Resources Conservation and Development Fund created.**

There is created a Water Resources Conservation and Development Fund to further enhance the state's ability to carry out the policy described in Section 73-10-1. The fund shall be administered by the Board of Water Resources. The fund is a revolving fund established for the construction, operation, and maintenance of projects considered by the board to be outside the scope of financing by the Water Resources Construction Fund, as created by Section 73-10-8, and shall include, but not be limited to, flood control projects.

Amended by Chapter 169, 1988 General Session

**73-10-25 Contents of fund -- Investment -- Contributions.**

- (1) The Water Resources Conservation and Development Fund consists of:
  - (a) money appropriated to it by the Legislature;
  - (b) money received from the sale of project water and power, less operating and maintenance costs;
  - (c) annual payments on contracts for projects constructed under Section 73-10-24 or the State Water Conservation Program; and
  - (d) other money or tax revenues designated by the Legislature to be credited to the Water Resources Conservation and Development Fund.
- (2) All money deposited into the Water Resources Conservation and Development Fund shall be invested by the state treasurer with interest accruing to the Water Resources Conservation



and Development Fund, except for payments, if any, necessary to comply with Section 148(f), Internal Revenue Code of 1986.

- (3) Contributions of money, property, or equipment may be received from any political subdivision of the state, federal agency, water users' association, person, or corporation for use in carrying out the purposes of Section 73-10-24.

Amended by Chapter 4, 1991 Special Session 1

**73-10-25.1 Credit enhancement and interest buy-down agreements.**

- (1) The Board of Water Resources may enter into credit enhancement agreements with political subdivisions containing terms and provisions that the board determines will reasonably improve the security for or marketability of water project obligations financed using the Water Resources Cities Water Loan Fund created in Section 73-10-22 or the Water Resources Conservation and Development Fund created in Section 73-10-24. Credit enhancement agreements may include provisions for loans to political subdivisions to pay the costs of obtaining letters of credit or other forms of insurance or security to provide security for water project obligations.
- (2) The Board of Water Resources may make loans or grants from the Water Resources Cities Water Loan Fund or the Water Resources Conservation and Development Fund to political subdivisions for interest buy-down agreements for water development projects.

Amended by Chapter 199, 1996 General Session

**73-10-26 Definitions -- Construction of a project by board -- Ownership and operation -- Transfer of a water right -- Purchase of a bond from an Indian tribe.**

- (1) As used in this section:
  - (a) "Board" means the Board of Water Resources created in Section 73-10-1.5.
  - (b) "Bond" means:
    - (i) a written obligation to repay borrowed money, whether denominated a bond, note, warrant, certificate of indebtedness, or otherwise; and
    - (ii) a lease agreement, installment purchase agreement, or other agreement that includes an obligation to pay money.
  - (c) "Division" means the Division of Water Resources created in Section 73-10-18.
  - (d) "Project" means a facility, works, or other real or personal property that:
    - (i) conserves or develops the water or hydroelectric power resources of the state; or
    - (ii) controls flooding.
- (2)
  - (a) The board, through the division, may construct a project.
  - (b) An electric public utility or a municipality of the state may construct an electrical facility incidental to a project.
  - (c) If the state constructs the electrical facility, the state must first offer the power and energy derived from the hydroelectric generating project to an electric public utility or municipality in the state for distribution to electric consumers.
- (3)
  - (a) The board, through the division, may consider a flood control project in the same manner and apply the same procedures and rules as the board would consider or apply to another project within its statutory authority.
  - (b) If funds controlled by the board are to be used for the flood control project, the planning of the project is subject to the review of the board.

- (c) If the flood control project is authorized for construction, the plans, specifications, and construction supervision shall be undertaken as prescribed by the board.
- (4) The board may enter into an agreement for the construction or financing of a project financed with money from the Water Resources Conservation and Development Fund with another state, the federal government, a political subdivision of the state, an Indian tribe, or a private corporation.
- (5)
  - (a)
    - (i) Except as provided by Subsections (5)(a)(ii) and (b), title to a project, including a water right, constructed or acquired with money from the Water Resources Conservation and Development Fund is vested in the state.
    - (ii) The board may take a bond legally issued by the project sponsor in lieu of or in addition to taking title to the project and water right.
  - (b) If an Indian tribe sponsors a project, the board may take a bond legally issued by the tribe, to the extent that federal law allows the tribe to issue a bond, in lieu of taking title to the project and water right, if the tribe:
    - (i) waives the defense of sovereign immunity regarding the bond issue in an action arising out of the issuance or default under the bond; and
    - (ii) agrees in writing that it will not challenge state court jurisdiction over any litigation resulting from default on its obligation in the transaction.
  - (c) Before entering into an agreement with or purchasing a bond from a tribe, the board shall:
    - (i) require that the tribe obtain the written approval of the Secretary of the United States Department of the Interior or the secretary's designee to all aspects of the agreement or bond;
    - (ii) obtain a legal opinion from a recognized bond counsel certifying:
      - (A) that the tribe has legal authority to:
        - (I) enter into the agreement; or
        - (II) issue the bond;
      - (B) that the pledge of an asset or revenue by the tribe as security for the payments under the agreement or bond is a valid and legally enforceable pledge; and
      - (C) that the agreement or bond may be enforced in a court of general jurisdiction in the state; and
    - (iii) determine whether it has sufficient legal recourse against the tribe and against a security pledged by the tribe in the event of default.
- (6)
  - (a) The board may own and operate a project if:
    - (i) the project is consistent with the plan adopted by the board; and
    - (ii) in the opinion of the board the ownership and operation of the project by the board is in the best interest of the state.
  - (b) In the ownership and operation of a project referred to in Subsection (6)(a), the board shall use a water right held in its name under authority of Section 73-10-19.
  - (c)
    - (i) The board may enter into a contract with another state, the federal government, a political subdivision of the state, an Indian tribe, or a private corporation for operation, maintenance, and administration of the project.
    - (ii) The board may pay the contracting agency a reasonable sum for operation, maintenance, and administration of the project.
- (7)

- (a) The board may also:
  - (i) enter into an agreement in which title to a project is conveyed to a cooperating project sponsor after charges assessed against the project have been paid to the state in accordance with the terms of the construction agreement or amendment to the agreement;
  - (ii) make the water and power available to the state's citizens who are, in the board's opinion, best able to use the water and power:
    - (A) that is conserved by the project; and
    - (B) to which the state has title;
  - (iii) enter into a contract for the use of the water and power with an individual or an organization composed of the state's citizens; and
  - (iv) assess a reasonable fee against a person using water and power from a project.
- (b) The amount collected over the amount to be returned to the state for payment of the principal, interest, and maintenance of the project shall be deposited in the Water Resources Conservation and Development Fund as established by Section 73-10-24.
- (8) The board shall retain ownership of a water right used for a project owned and operated by the board unless:
  - (a) the water right originally held by a cooperating project sponsor is conveyed to the project sponsor upon payment to the state of charges assessed against the project in accordance with the terms of the construction agreement or an amendment to the agreement; or
  - (b) the board transfers an unperfected water right held by the board that is not being used in a state-owned project to a political subdivision of the state, an agency of the federal government, or a nonprofit water company.
- (9) A transfer of the board's water right shall be made to the entity that is best able to use the water right for the benefit of the state's citizens.

Amended by Chapter 267, 2008 General Session

**73-10-27 Definitions -- Project priorities -- Considerations -- Determinations of feasibility -- Bids and contracts -- Definitions -- Retainage.**

- (1) As used in this section:
  - (a) "Board" means the Board of Water Resources created in Section 73-10-1.5.
  - (b) "Estimated cost" means the cost of the labor, material, and equipment necessary for construction of the contemplated project.
  - (c) "Lowest responsible bidder" means a licensed contractor:
    - (i) who:
      - (A) submits the lowest bid; and
      - (B) furnishes a payment bond and a performance bond under Sections 14-1-18 and 63G-6a-1103; and
    - (ii) whose bid:
      - (A) is in compliance with the invitation for a bid; and
      - (B) meets the plans and specifications.
- (2) In considering the priority for a project to be built or financed with funds made available under Section 73-10-24, the board shall give preference to a project that:
  - (a) is sponsored by, or for the benefit of, the state or a political subdivision of the state;
  - (b) meets a critical local need;
  - (c) has greater economic feasibility;
  - (d) will yield revenue to the state within a reasonable time or will return a reasonable rate of interest, based on financial feasibility; and

- (e) meets other considerations deemed necessary by the board, including wildlife management and recreational needs.
- (3)
  - (a) In determining the economic feasibility, the board shall establish a benefit-to-cost ratio for each project, using a uniform standard of procedure for all projects.
  - (b) In considering whether a project should be built, the benefit-to-cost ratio for each project shall be weighted based on the relative cost of the project.
  - (c) A project, when considered in total with all other projects constructed under this chapter and still the subject of a repayment contract, may not cause the accumulative benefit-to-cost ratio of the projects to be less than one to one.
- (4) A project may not be built if the project is not:
  - (a) in the public interest, as determined by the board; or
  - (b) adequately designed based on sound engineering and geologic considerations.
- (5) In preparing a project constructed by the board, the board shall:
  - (a) based on a competitive bid, award a contract for:
    - (i) a flood control project:
      - (A) involving a city or county; and
      - (B) costing in excess of \$35,000;
    - (ii) the construction of a storage reservoir in excess of 100 acre-feet; or
    - (iii) the construction of a hydroelectric generating facility;
  - (b) publish an advertisement for a competitive bid:
    - (i) at least once a week for three consecutive weeks in a newspaper with general circulation in the state, with the last date of publication appearing at least five days before the schedule bid opening; and
    - (ii) indicating that the board:
      - (A) will award the contract to the lowest responsible bidder; and
      - (B) reserves the right to reject any and all bids;
  - (c) readvertise the project in the manner specified in Subsection (5)(b) if the board rejects all of the initial bids on the project; and
  - (d) keep an accurate record of all facts and representations relied upon in preparing the board's estimated cost for a project that is subject to the competitive bidding requirements of this section.
- (6) If no satisfactory bid is received by the board upon the readvertisement of the project in accordance with Subsection (5), the board may proceed to construct the project in accordance with the plan and specifications used to calculate the estimated cost of the project.
- (7) If a payment on a contract with a private contractor for construction of a project under this section is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

Amended by Chapter 347, 2012 General Session

**73-10-28 Charges for use -- Interest.**

- (1) As used in this section, "board" means the Board of Water Resources created in Section 73-10-1.5.
- (2) The board shall establish:
  - (a) a charge for the use of water, power, or a facility based on:
    - (i) a contractual agreement approved by the board for a project owned by the state; and
    - (ii) the ability of an individual project to return the investment to the state; and

- (b) an interest rate for the money the board lends to finance a project based on:
  - (i) market conditions;
  - (ii) the repayment ability of the project; and
  - (iii) other factors considered relevant by the board.

Amended by Chapter 267, 2008 General Session

**73-10-29 Additional amounts allocated -- Repayment.**

The board, in addition to the amount allocated to a project to cover the actual cost of construction, may allocate to the project constructed by it, under contract or otherwise, such amounts as may be determined by it for investigating, engineering, inspection, and other expenses, and may provide for the repayment of the same out of the first money repayable from the project under the contract for its construction, and such money so repaid shall be accounted for within the Water Resources Construction Fund, to be used by the board for the purpose of making investigations for the development of the water resources of the state.

Amended by Chapter 169, 1988 General Session

**73-10-30 Construction in conjunction with Water Resources Construction Fund -- Supplemental financing.**

- (1) Projects authorized under this chapter may be constructed in participation with money from the Water Resources Construction Fund when authorized by the board.
- (2) Projects specified by the Legislature to be financed by general obligation bonds of the state may receive supplemental financing from the Water Resources Conservation and Development Fund when needed and money is available.

Amended by Chapter 342, 2011 General Session

**73-10-31 Allocation of funds for credit enhancement and interest buy-down agreements.**

- (1) Of the combined expenditures from the Water Resources Cities Water Loan Fund and Water Resources Conservation and Development Fund authorized by the Board of Water Resources each year, at least 10% shall be allocated for credit enhancement and interest buy-down agreements.
- (2) The requirement specified in Subsection (1) shall apply only so long as sales and use tax is transferred to the Water Resources Conservation and Development Fund as provided in Section 59-12-103.

Enacted by Chapter 199, 1996 General Session

**73-10-32 Definitions -- Water conservation plan required.**

- (1) As used in this section:
  - (a) "Board" means the Board of Water Resources created under Section 73-10-1.5.
  - (b) "Division" means the Division of Water Resources created under Section 73-10-18.
  - (c) "Retail" means the level of distribution of culinary water that supplies culinary water directly to the end user.
  - (d) "Retail water provider" means an entity which:
    - (i) supplies culinary water to end users; and
    - (ii) has more than 500 service connections.

- (e) "Water conservancy district" means an entity formed under Title 17B, Chapter 2a, Part 10, Water Conservancy District Act.
  - (f) "Water conservation plan" means a written document that contains existing and proposed water conservation measures describing what will be done by retail water providers, water conservancy districts, and the end user of culinary water to help conserve water and limit or reduce its use in the state in terms of per capita consumption so that adequate supplies of water are available for future needs.
- (2)
- (a) Each water conservation plan shall contain:
    - (i) a clearly stated overall water use reduction goal and an implementation plan for each of the water conservation measures it chooses to use, including a timeline for action and an evaluation process to measure progress;
    - (ii) a requirement that each water conservancy district and retail water provider devote part of at least one regular meeting every five years of its governing body to a discussion and formal adoption of the water conservation plan, and allow public comment on it;
    - (iii) a requirement that a notification procedure be implemented that includes the delivery of the water conservation plan to the media and to the governing body of each municipality and county served by the water conservancy district or retail water provider; and
    - (iv) a copy of the minutes of the meeting and the notification procedure required in Subsections (2)(a)(ii) and (iii) which shall be added as an appendix to the plan.
  - (b) A water conservation plan may include information regarding:
    - (i) the installation and use of water efficient fixtures and appliances, including toilets, shower fixtures, and faucets;
    - (ii) residential and commercial landscapes and irrigation that require less water to maintain;
    - (iii) more water efficient industrial and commercial processes involving the use of water;
    - (iv) water reuse systems, both potable and not potable;
    - (v) distribution system leak repair;
    - (vi) dissemination of public information regarding more efficient use of water, including public education programs, customer water use audits, and water saving demonstrations;
    - (vii) water rate structures designed to encourage more efficient use of water;
    - (viii) statutes, ordinances, codes, or regulations designed to encourage more efficient use of water by means such as water efficient fixtures and landscapes;
    - (ix) incentives to implement water efficient techniques, including rebates to water users to encourage the implementation of more water efficient measures; and
    - (x) other measures designed to conserve water.
  - (c) The Division of Water Resources may be contacted for information and technical resources regarding measures listed in Subsections (2)(b)(i) through (2)(b)(x).
- (3)
- (a) Before April 1, 1999, each water conservancy district and each retail water provider shall:
    - (i)
      - (A) prepare and adopt a water conservation plan if one has not already been adopted; or
      - (B) if the district or provider has already adopted a water conservation plan, review the existing water conservation plan to determine if it should be amended and, if so, amend the water conservation plan; and
    - (ii) file a copy of the water conservation plan or amended water conservation plan with the division.
  - (b) Before adopting or amending a water conservation plan, each water conservancy district or retail water provider shall hold a public hearing with reasonable, advance public notice.

- (4)
  - (a) The board shall:
    - (i) provide guidelines and technical resources to retail water providers and water conservancy districts to prepare and implement water conservation plans;
    - (ii) investigate alternative measures designed to conserve water; and
    - (iii) report regarding its compliance with the act and impressions of the overall quality of the plans submitted to the Natural Resources, Agriculture, and Environment Interim Committee of the Legislature at its meeting in November 2004.
  - (b) The board shall publish an annual report in a paper of state-wide distribution specifying the retail water providers and water conservancy districts that do not have a current water conservation plan on file with the board at the end of the calendar year.
- (5) A water conservancy district or retail water provider may only receive state funds for water development if they comply with the requirements of this act.
- (6) Each water conservancy district and retail water provider specified under Subsection (3)(a) shall:
  - (a) update its water conservation plan no less frequently than every five years; and
  - (b) follow the procedures required under Subsection (3) when updating the water conservation plan.
- (7) It is the intent of the Legislature that the water conservation plans, amendments to existing water conservation plans, and the studies and report by the board be handled within the existing budgets of the respective entities or agencies.

Amended by Chapter 329, 2007 General Session

**73-10-33 Management plan for water conveyance facilities.**

- (1) As used in this section:
  - (a) "Board" means the Board of Water Resources created by Section 73-10-1.5.
  - (b) "Conservation district" means a conservation district created under Title 17D, Chapter 3, Conservation District Act.
  - (c) "Division" means the Division of Water Resources created by Section 73-10-18.
  - (d) "Facility owner or operator" means:
    - (i) a water company as defined in Subsection 73-3-3.5(1)(b); or
    - (ii) an owner or operator of a water conveyance facility.
  - (e) "Management plan" means a written document meeting the requirements of Subsection (3).
  - (f) "Potential risk" means a condition where, if a water conveyance facility fails, the failure would create a high probability of:
    - (i) causing loss of human life; or
    - (ii) causing extensive economic loss, including damage to critical transportation facilities, utility facilities, or public buildings.
  - (g) "Potential risk location" means a segment of a water conveyance facility that constitutes a potential risk due to:
    - (i) location;
    - (ii) elevation;
    - (iii) soil conditions;
    - (iv) structural instability;
    - (v) water volume or pressure; or
    - (vi) other conditions.
  - (h)

- (i) "Water conveyance facility" means a water conveyance defined in Section 57-13a-101.
  - (ii) "Water conveyance facility" does not include:
    - (A) a pipeline conveying water for industrial use, or municipal use, within a public water system as defined in Section 19-4-102;
    - (B) a natural channel used to convey water for use within a water conveyance facility; or
    - (C) a fully piped irrigation system.
- (2)
- (a) For a water conveyance facility that has a potential risk location, the board or division may issue a grant or loan to the facility owner or operator, and the facility owner or operator may receive state money for water development or water conveyance facility repair or improvements, only if the facility owner or operator promptly adopts a management plan in accordance with this section.
  - (b) For a management plan to be considered to be promptly adopted for purposes of this Subsection (2), the facility owner or operator shall:
    - (i) adopt the management plan by an affirmative vote of the facility owner or operator's board of directors, or persons occupying a similar status or performing similar functions before receiving money under Subsection (2)(a);
    - (ii)
      - (A) adopt the management plan as described in Subsection (2)(b)(i) by no later than:
        - (I) May 1, 2013, for a water conveyance facility in operation on May 11, 2011; or
        - (II) for a water conveyance facility that begins operation after May 11, 2011, one year after the day on which the water conveyance facility begins operation; or
      - (B)
        - (I) adopt the management plan as described in Subsection (2)(b)(i); and
        - (II) provide written justification satisfactory to the board as to why the facility owner or operator was unable to adopt a management plan during the time period provided in Subsection (2)(b)(ii)(A); and
    - (iii) update the management plan adopted under Subsection (2)(b)(i) no less frequently than every 10 years.
- (3) A management plan described in Subsection (2) shall include at least the following:
- (a) a GIS coverage or drawing of each potential risk location of a water conveyance facility identifying any:
    - (i) existing canal and lateral alignment of the canal facility;
    - (ii) point of diversion;
    - (iii) bridge;
    - (iv) culvert;
    - (v) screen or trash rack; and
    - (vi) spill point;
  - (b) an evaluation of any potential slope instability that may cause a potential risk, including:
    - (i) failure of the facility;
    - (ii) land movement that might result in failure of the facility; or
    - (iii) land movement that might result from failure of the facility;
  - (c) proof of insurance coverage or other means of financial responsibility against liability resulting from failure of the water conveyance facility;
  - (d) a maintenance and improvement plan;
  - (e) a schedule for implementation of a maintenance and improvement plan;
  - (f) an emergency response plan that:
    - (i) is developed after consultation with local emergency response officials;



- (ii) is updated annually; and
  - (iii) includes, in the case of an emergency, how a first responder can:
    - (A) contact the facility owner or operator; and
    - (B) obtain information described in Subsection (3)(a);
- (g) any potential source of financing for maintenance and improvements under a maintenance and improvement plan;
- (h) identification of each municipality or county through which water is conveyed or delivered by the water conveyance facility;
- (i) a statement concerning whether storm water enters the water conveyance facility; and
- (j) if storm water enters the water conveyance facility:
  - (i) an estimate of the maximum volume and flow of all water present in the water conveyance facility as a result of a six-hour, 25-year storm event;
  - (ii) on the basis of information provided in accordance with Subsection (4), identification of the points at which any storm structures introduce water into the water conveyance facility and the anticipated flow that may occur at each structure; and
  - (iii) the name of each governmental agency that has responsibility for storm water management within the area from which storm water drains into the water conveyance facility.
- (4) A private or public entity that introduces storm water into a water conveyance facility shall provide the facility owner or operator with an estimate of the maximum volume and flow of water that may occur at each structure that introduces storm water into the water conveyance facility.
- (5)
  - (a) A facility owner or operator of a water conveyance facility shall provide a municipality or county in which is located a potential risk location of the water conveyance facility an outline of the information provided in Subsection (3)(f).
  - (b) A facility owner or operator shall give notice to the planning and zoning department of each municipality and county identified in Subsection (3)(h) outlining the information provided in Subsections (3)(f), (i), and (j).
  - (c) An outline of information provided under this Subsection (5) is a protected record under Section 63G-2-305.
- (6)
  - (a) The division may provide information and technical resources to a facility owner or operator of a water conveyance facility, regardless of whether the water conveyance facility has a potential risk location.
  - (b) In providing the information and resources described in Subsection (6)(a), the division may coordinate with efforts of any association of conservation districts that may provide similar information and technical resources.
  - (c) The information and technical resources described in Subsection (6)(a) include:
    - (i) engaging state and local water users in voluntary completion of a management plan;
    - (ii) developing standard guidelines, checklists, or templates that may be used by a facility owner or operator;
    - (iii) using conservation districts as points of contact with a facility owner or operator;
    - (iv) providing training to help a facility owner or operator to adopt a management plan; and
    - (v) assisting, at the request and under the direction of, a facility owner or operator with efforts to adopt or implement a management plan.
- (7)
  - (a) A facility owner or operator of a water conveyance facility that has a potential risk location shall provide the board or division upon request:

- (i) written certification signed under oath by a person authorized to act for the board of directors or persons occupying a similar status or performing similar functions, certifying that the management plan complies with this section; and
- (ii) an opportunity to review a management plan.
- (b) A management plan received by the board or division under this section is a protected record under Section 63G-2-305.
- (8) The board shall report concerning compliance with this section to the Natural Resources, Agriculture, and Environment Interim Committee of the Legislature before November 30, 2013.
- (9) The division and board may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, concerning the requirements of this section.
- (10) This section does not:
  - (a) create a private right of action for a violation of this section; or
  - (b) limit, impair, or enlarge a person's right to sue and recover damages from a facility owner or operator in a civil action for a cause of action that is not based on a violation of this section.
- (11) The following may not be introduced as evidence in any civil litigation on the issue of negligence, injury, or the calculation of damages:
  - (a) a management plan prepared in accordance with this section;
  - (b) the failure to prepare or adopt a management plan in accordance with this section; or
  - (c) the failure to update a management plan in accordance with this section.

Amended by Chapter 355, 2014 General Session

## **Chapter 10c**

### **Water Development Coordinating Council**

#### **73-10c-1 Legislative findings.**

The Legislature finds that the conservation, development, treatment, restoration, and protection of the waters of this arid state are a state purpose and a matter of statewide concern. The needs and requirements associated with conserving, developing, treating, restoring, and protecting the waters of this state are of such magnitude and complexity that they justify state participation and assistance. The federal Safe Drinking Water Act, 42 United States Code Annotated Secs. 300f et seq. (federal drinking water act) establishes a national policy to ensure delivery of safe drinking water to the public, establishes maximum pollution levels, monitoring and reporting requirements and provides penalties, including the assessment of fines, for political subdivisions that violate the act. The Federal Water Pollution Control Act, Title 33, Chapter 26, United States Code (federal water pollution control act), establishes a national policy and program for the restoration, preservation, and protection of the nation's waters. The political subdivisions of this state are prohibited by the federal water pollution control act from polluting the navigable waters of the United States and are subject to various penalties, including the assessment of fines, for failing to meet the minimum standards of the federal water pollution control act. Pursuant to the requirements of the federal pollution control act, the state has established water quality standards and effluent limitations with respect to the waters of this state. These standards and limitations have been adopted by the United States Environmental Protection Agency for the purpose of issuing permits for wastewater projects and the state must certify compliance with these standards and limitations in order for the federal permit to be obtained. Under the federal water pollution control act, the state and its political subdivisions may receive grants, subject to the availability of

funds, to meet the requirements of the federal water pollution control act if the state or its political subdivisions make contributions to the nonfederal share of construction costs of treatment works. It is desirable that the state assist in providing financing mechanisms to aid political subdivisions in securing needed water treatment and transporting water and in the acquisition and construction of drinking water projects and wastewater projects in order to accomplish the foregoing purposes, to protect the public health and welfare, to meet the anticipated growth in the state and to encourage development of the state's resources.

Enacted by Chapter 354, 1983 General Session

### **73-10c-2 Definitions.**

As used in this chapter:

- (1) "Board" means the Board of Water Resources created in Section 73-10-1.5.
- (2) "Council" means the Water Development Coordinating Council created by Sections 79-2-201 and 73-10c-3.
- (3) "Credit enhancement agreement" means an agreement entered into according to this chapter between the Drinking Water Board or the Water Quality Board, on behalf of the state, and a political subdivision, for the purpose of providing methods and assistance to political subdivisions to improve the security for and marketability of drinking water project obligations and wastewater project obligations.
- (4) "Drinking Water Board" means the Drinking Water Board appointed according to Section 19-4-103.
- (5) "Drinking water or wastewater project obligation" means, as appropriate, any bond, note, or other obligation of a political subdivision issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading, or improving a drinking water project or wastewater project.
- (6)
  - (a) "Drinking water project" means any work or facility that is necessary or desirable to provide water for human consumption and other domestic uses and:
    - (i) has at least 15 service connections; or
    - (ii) serves an average of 25 individuals daily for at least 60 days of the year.
  - (b) "Drinking water project" includes:
    - (i) collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system;
    - (ii) collection pretreatment or storage facilities used primarily in connection with the system but not under operator's control; and
    - (iii) studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks.
- (7) "Financial assistance programs" means the various programs administered by the state whereby loans, grants, and other forms of financial assistance are made available to political subdivisions of this state to finance the costs of water and wastewater projects.
- (8) "Hardship Grant Assessment" means the charge the Water Quality Board or Drinking Water Board assesses to recipients of loans made from the subaccount created in Subsection 73-10c-5(2)(b) or 73-10c-5(3)(b) in lieu of or in addition to interest charged on these loans.
- (9) "Nonpoint source project" means a facility, system, practice, study, activity, or mechanism that abates, prevents, or reduces the pollution of waters of this state by a nonpoint source.
- (10) "Political subdivision" means a county, city, town, improvement district, water conservancy district, special service district, drainage district, metropolitan water district, irrigation district, separate legal or administrative entity created under Title 11, Chapter 13, Interlocal

Cooperation Act, or any other entity constituting a political subdivision under the laws of this state.

(11) "Security fund" means the Water Development Security Fund created in Section 73-10c-5.

(12) "Wastewater project" means:

- (a) a sewer, storm or sanitary sewage system, sewage treatment facility, lagoon, sewage collection facility and system, and related pipelines, and all similar systems, works, and facilities necessary or desirable to collect, hold, cleanse, or purify any sewage or other polluted waters of this state; and
- (b) a study, pollution prevention activity, or pollution education activity that will protect the waters of this state.

(13) "Waters of this state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, irrigation system, drainage system, or other body or accumulation of water whether surface, underground, natural, artificial, public, private, or other water resource of the state which is contained within or flows in or through the state.

(14) "Water Quality Board" means the Water Quality Board appointed according to Section 19-5-103.

Amended by Chapter 344, 2009 General Session

### **73-10c-3 Water Development Coordinating Council created -- Purpose -- Members.**

- (1)
- (a) There is created within the Department of Natural Resources a Water Development Coordinating Council. The council comprises:
    - (i) the director of the Division of Water Resources;
    - (ii) the executive secretary of the Water Quality Board;
    - (iii) the executive secretary of the Drinking Water Board;
    - (iv) the director of the Housing and Community Development Division or the director's designee; and
    - (v) the state treasurer or the treasurer's designee.
  - (b) The council shall choose a chair and vice chair from among its own members.
  - (c) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
    - (i) Section 63A-3-106;
    - (ii) Section 63A-3-107; and
    - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (2) The purposes of the council are to:
- (a) coordinate the use and application of the funds available to the state to give financial assistance to political subdivisions of this state so as to promote the conservation, development, treatment, restoration, and protection of the waters of this state;
  - (b) promote the coordination of the financial assistance programs administered by the state and the use of the financing alternative most economically advantageous to the state and its political subdivisions;
  - (c) promote the consideration by the Board of Water Resources, Drinking Water Board, and Water Quality Board of regional solutions to the water and wastewater needs of individual political subdivisions of this state; and
  - (d) assess the adequacy and needs of the state and its political subdivisions with respect to water-related infrastructures and advise the governor and the Legislature on those funding needs.

Amended by Chapter 212, 2012 General Session

**73-10c-4 Credit enhancement and interest buy-down agreements -- Loans or grants -- Hardship grants.**

- (1) On behalf of the state, the Water Quality Board and the Drinking Water Board may each enter into credit enhancement agreements with political subdivisions containing terms and provisions that the acting board determines will reasonably improve the security for or marketability of drinking water and wastewater project obligations, including any of the following:
  - (a) a term providing security for drinking water and wastewater project obligations, as provided in Subsection 73-10c-6(2)(b), by agreeing to purchase the drinking water or wastewater project obligations of, or to make loans to, political subdivisions from a subaccount of the security fund for the purpose of preventing defaults in the payment of principal and interest on drinking water and wastewater project obligations;
  - (b) a term making loans to political subdivisions to pay the cost of obtaining:
    - (i) letters of credit from banks, savings and loan institutions, insurance companies, or other financial institutions;
    - (ii) municipal bond insurance; or
    - (iii) other forms of insurance or security to provide security for drinking water and wastewater project obligations; and
  - (c) a term providing other methods and assistance to political subdivisions that are reasonable and proper to enhance the marketability of or security for drinking water and wastewater project obligations.
- (2)
  - (a) The Drinking Water Board and the Water Quality Board may each make loans from a security fund subaccount to political subdivisions to finance all or part of drinking water and wastewater project costs by following the procedures and requirements of Sections 73-10c-4.1 and 73-10c-4.2.
  - (b) These loans may only be made after credit enhancement agreements, interest buy-down agreements, and all other financing alternatives have been evaluated by the acting board and the board determines those options are unavailable or unreasonably expensive for the subdivision requesting assistance.
  - (c) Loans may be made from the security fund subaccount at interest rates determined by the board.
- (3)
  - (a) The Drinking Water Board and the Water Quality Board may each make loans or grants from the security fund to political subdivisions for interest buy-down agreements for drinking water or wastewater project obligations.
  - (b) The Drinking Water Board may make loans or grants from the security account to political subdivisions for planning for drinking water projects.
- (4)
  - (a) Of the total amount of money annually available to the Drinking Water Board and Water Quality Board for financial assistance to political subdivisions, at least 10% shall be allocated by each board for credit enhancement and interest buy-down agreements.
  - (b) The requirement specified in Subsection (4)(a) shall apply only so long as sales and use tax is transferred to the Utah Wastewater Loan Program Subaccount and Drinking Water Loan Program Subaccount as provided in Section 59-12-103.

- (5) To the extent money is available in the hardship grant subaccounts of the security fund, the Drinking Water Board and the Water Quality Board may each make grants to political subdivisions that meet the drinking water or wastewater project loan considerations respectively, but whose projects are determined by the granting board to not be economically feasible unless grant assistance is provided.
- (6) The Drinking Water and Water Quality Boards may at any time transfer money out of their respective hardship grant subaccounts of the security fund to their respective loan program subaccounts.
- (7) The Water Quality Board may make a grant from the Hardship Grant Program for Wastewater Projects Subaccount created in Subsection 73-10c-5(2)(c) for a nonpoint source project as provided by Section 73-10c-4.5 if:
  - (a) money is available in the subaccount; and
  - (b) the Water Quality Board determines that the project would not be economically feasible unless a grant were made.

Amended by Chapter 142, 2007 General Session

**73-10c-4.1 Wastewater projects -- Loan criteria and requirements -- Process for approval.**

- (1) The Water Quality Board shall review the plans and specifications for a wastewater project before approval of any loan and may condition approval on the availability of loan funds and on assurances that the Water Quality Board considers necessary to ensure that loan funds are used to pay the wastewater project costs and that the wastewater project is completed.
- (2)
  - (a) Each loan shall specify the terms for repayment, with the term, interest rate or rates, including a variable rate, and security as determined by the Water Quality Board.
  - (b) The loan may be evidenced by general obligation or revenue bonds or other obligations of the political subdivision.
  - (c) Loan payments made by a political subdivision shall be deposited in the Water Quality Security Subaccount as described in Section 73-10c-5.
  - (d) The loans are subject to the provisions of Title 63B, Chapter 1b, State Financing Consolidation Act.
- (3) In determining the priority for a wastewater project loan, the Water Quality Board shall consider:
  - (a) the ability of the political subdivision to obtain money for the wastewater project from other sources or to finance the project from its own resources;
  - (b) the ability of the political subdivision to repay the loan;
  - (c) whether or not a good faith effort to secure all or part of the services needed from the private sector of the economy has been made; and
  - (d) whether or not the wastewater project:
    - (i) meets a critical local or state need;
    - (ii) is cost effective;
    - (iii) will protect against present or potential health hazards;
    - (iv) is needed to comply with minimum standards of the federal Water Pollution Control Act, Title 33, Chapter 26, United States Code, or any similar or successor statute;
    - (v) is needed to comply with the minimum standards of Title 19, Chapter 5, Water Quality Act, or any similar or successor statute;
    - (vi) is designed to reduce the pollution of the waters of this state; and
    - (vii) meets any other consideration considered necessary by the Water Quality Board.
- (4) In determining the cost effectiveness of a wastewater project the Water Quality Board shall:

- (a) require the preparation of a cost-effective analysis of feasible wastewater treatment or conveyance alternatives capable of meeting state and federal water quality and public health requirements;
  - (b) consider monetary costs, including the present worth or equivalent annual value of all capital costs and operation, maintenance, and replacement costs; and
  - (c) ensure that the alternative selected is the most economical means of meeting applicable state and federal wastewater and water quality or public health requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.
- (5) A loan may not be made for a wastewater project that is not in the public interest as determined by the Water Quality Board.

Amended by Chapter 382, 2008 General Session

**73-10c-4.2 Drinking water projects -- Loan criteria and requirements -- Process for approval.**

- (1) The Drinking Water Board shall review the plans and specifications for a drinking water project before approval of any loan and may condition approval on the availability of loan funds and on the assurances that the Drinking Water Board considers necessary to ensure that loan funds are used to pay the drinking water project costs and that the drinking water project is completed.
- (2)
- (a) Each loan shall specify the terms for repayment, with the term, interest rate or rates, including a variable rate, and security as determined by the Drinking Water Board.
  - (b) The loan may be evidenced by general obligation or revenue bonds or other obligations of the political subdivision.
  - (c) Loan payments made by a political subdivision shall be deposited in the Drinking Water Security Subaccount as described in Section 73-10c-5.
  - (d) The loans are subject to the provisions of Title 63B, Chapter 1b, State Financing Consolidation Act.
- (3) In determining the priority for a drinking water project loan, the Drinking Water Board shall consider:
- (a) the ability of the political subdivision to obtain money for the drinking water project from other sources or to finance such project from its own resources;
  - (b) the ability of the political subdivision to repay the loan;
  - (c) whether or not a good faith effort to secure all or part of the services needed from the private sector of the economy has been made; and
  - (d) whether or not the drinking water project:
    - (i) meets a critical local or state need;
    - (ii) is cost effective;
    - (iii) will protect against present or potential health hazards;
    - (iv) is needed to comply with minimum standards of the federal Safe Drinking Water Act, or any similar or successor statute;
    - (v) is needed to comply with the minimum standards of Title 19, Chapter 4, Safe Drinking Water Act, or any similar or successor statute; and
    - (vi) meets any other consideration considered necessary by the Drinking Water Board.
- (4) In determining the cost effectiveness of a drinking water project the Drinking Water Board shall:
- (a) require the preparation of a cost-effective analysis of feasible drinking water projects;
  - (b) consider monetary costs, including the present worth or equivalent annual value of all capital costs and operation, maintenance, and replacement cost; and

- (c) ensure that the alternative selected is the most economical means of meeting applicable water quality or public health requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.
- (5) A loan may not be made for a drinking water project that is not in the public interest as determined by the Drinking Water Board.

Amended by Chapter 382, 2008 General Session

**73-10c-4.5 Nonpoint source project loans and grants -- Project objectives -- Water Quality Board duties.**

- (1) The Water Quality Board may make a loan from the Utah Wastewater Loan Program Subaccount created in Subsection 73-10c-5(2)(a) or from the Utah State Revolving Fund for Wastewater Projects Subaccount created in Subsection 73-10c-5(2)(b) or a grant from the Hardship Grant Program for Wastewater Projects Subaccount created in Subsection 73-10c-5(2)(c) to a political subdivision, individual, corporation, association, state or federal agency, or other private entity to acquire, construct, or implement a nonpoint source project.
- (2) The Water Quality Board may only award a loan or grant for a nonpoint source project that will achieve one or more of the following objectives:
  - (a) abate or reduce raw sewage discharges;
  - (b) repair or replace failing individual on-site wastewater disposal systems;
  - (c) abate or reduce untreated or uncontrolled runoff;
  - (d) improve critical aquatic habitat resources;
  - (e) conserve soil, water, or other natural resources;
  - (f) protect and improve ground water quality;
  - (g) preserve and protect the beneficial uses of waters of the state;
  - (h) reduce the number of water bodies not achieving water quality standards;
  - (i) improve watershed management; or
  - (j) prepare and implement total maximum daily load (TMDL) assessments.
- (3) The Water Quality Board shall:
  - (a) determine the amount, term, and interest rate for each loan made under this section;
  - (b) assure that adequate security is obtained for each loan;
  - (c) establish criteria and procedures for determining priority nonpoint source projects and award loans in accordance with those priorities; and
  - (d) make rules to implement this section in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 382, 2008 General Session

**73-10c-5 Water Development Security Fund created -- Water Quality Security and Drinking Water Security Subaccounts created -- Use -- Revolving loan funds -- Hardship grants.**

- (1) There is established an enterprise fund known as the Water Development Security Fund which includes the Water Quality Security Subaccount and the Drinking Water Security Subaccount.
- (2) The Water Quality Security Subaccount consists of four subaccounts:
  - (a) the Utah Wastewater Loan Program Subaccount, which consists of:
    - (i) money appropriated to the subaccount by the Legislature;
    - (ii) money received from the repayment of the principal of loans made by the Water Quality Board under Sections 73-10c-4 and 73-10c-6 from the Utah Wastewater Loan Program Subaccount; and



- (iii) money deposited in the subaccount under any other law;
  - (b) the Utah State Revolving Fund for Wastewater Projects Subaccount, which consists of:
    - (i) money appropriated to the subaccount by the Legislature;
    - (ii) money received from the Utah Wastewater Loan Program Subaccount applied to meet match requirements for federal funds under 33 U.S.C.A. 1251 et seq., federal Clean Water Act;
    - (iii) money received from the repayment of loans made by the Water Quality Board under Section 73-10c-4 from the Utah State Revolving Fund for Wastewater Projects Subaccount;
    - (iv) money received from the repayment of loans made by the Water Quality Board under Section 73-10c-4.5;
    - (v) money deposited in the subaccount under any other law;
    - (vi) money received under and subject to the restrictions of 33 U.S.C.A. 1251 et seq., federal Clean Water Act, and which is eligible for use in state revolving loan funds established to meet the requirements of the act; and
    - (vii) all investment income derived from money in the Utah State Revolving Fund for Wastewater Projects Subaccount;
  - (c) the Hardship Grant Program for Wastewater Projects Subaccount, which consists of:
    - (i) money appropriated to the subaccount by the Legislature;
    - (ii) money received as interest payments on loans made by the Water Quality Board under Sections 73-10c-4 and 73-10c-6, from the Utah Wastewater Loan Program Subaccount;
    - (iii) money deposited in the subaccount under any other law;
    - (iv) the Hardship Grant Assessment charged to State Revolving Fund loan recipients; and
    - (v) all investment income derived from money in the Utah Wastewater Loan Program Subaccount or the Hardship Grant Program for Wastewater Projects Subaccount; and
  - (d) the Water Quality Origination Fee Subaccount, which consists of the origination fee paid under Section 73-10c-10.
- (3) The Drinking Water Security Subaccount consists of four subaccounts:
- (a) the Drinking Water Loan Program Subaccount, which consists of:
    - (i) money appropriated to the subaccount by the Legislature;
    - (ii) money received from the repayment of the principal of loans made by the Drinking Water Board under Sections 73-10c-4 and 73-10c-6, from the Drinking Water Loan Program Subaccount; and
    - (iii) money deposited in the subaccount under any other law;
  - (b) the State Revolving Fund for Drinking Water Projects Subaccount, which consists of:
    - (i) money appropriated to the subaccount by the Legislature;
    - (ii) money received from the Utah Drinking Water Loan Program Subaccount and applied to meet match requirements for federal funds under 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act;
    - (iii) money received from the repayment of loans made by the Drinking Water Board under Section 73-10c-4 from the State Revolving Fund for Drinking Water Projects Subaccount;
    - (iv) money deposited in the subaccount under any other law;
    - (v) money received under and subject to the restrictions of 42 U.S.C.A. 300f et seq., federal Safe Drinking Water Act, and which is eligible for use in state revolving loan funds established to meet the requirements of the act; and
    - (vi) all investment income derived from money in the State Revolving Fund for Drinking Water Projects Subaccount;
  - (c) the Hardship Grant Program for Drinking Water Projects Subaccount, which consists of:
    - (i) money appropriated to the subaccount by the Legislature;

- (ii) money received from interest payments on loans made by the Drinking Water Board under Sections 73-10c-4 and 73-10c-6, from the Drinking Water Loan Program Subaccount;
- (iii) money deposited in the subaccount under any other law;
- (iv) the Hardship Grant Assessment charged to State Revolving Fund loan recipients; and
- (v) all investment income derived from money in the Drinking Water Loan Program Subaccount or the Hardship Grant Program for Drinking Water Projects Subaccount; and
- (d) the Drinking Water Origination Fee Subaccount, which consists of the origination fee paid under Section 73-10c-10.
- (4) State money in the Water Quality Security Subaccount and the Drinking Water Security Subaccount may be applied to meet match requirements for federal funds under the Clean Water Act, 33 U.S.C. Sec. 1251 et seq. and the Safe Drinking Water Act, 42 U.S.C. Sec. 300f et seq.
- (5) If the money in the security fund is insufficient for the purposes for which the security fund is established, the council shall ask the governor to request the Legislature to appropriate additional money to the account.
- (6)
  - (a) The Drinking Water Board and Water Quality Board may use the money in the appropriate security fund subaccount only to the extent of the money available in the account, for the support of drinking water projects and wastewater projects in accordance with the terms of credit enhancement agreements, grant agreements, and loan agreements.
  - (b) Repayments to the security fund from loans made by the acting board, money allocated by the Legislature, and interest accrued on the money shall remain available for use by that board for further project funding.
  - (c) The Drinking Water Board and Water Quality Board may use the money in the origination fee subaccount to administer this chapter.
- (7) Funds received under the Safe Drinking Water Act, 42 U.S.C. Sec. 300f et seq. may be used for providing financial assistance to community water systems and nonprofit noncommunity water systems as defined and within the limits of that act.

Amended by Chapter 342, 2011 General Session

**73-10c-6 Credit enhancement agreement -- Provisions for use of funds.**

- (1)
  - (a) A credit enhancement agreement may be made for the purpose of facilitating financing for political subdivisions.
  - (b) A credit enhancement agreement may provide for the use of funds from the security fund to accomplish the purposes specified in Section 73-10c-4.
- (2)
  - (a) The political subdivision, prior to the sale or issuance of a drinking water or a wastewater project obligation, shall:
    - (i) apply to the Drinking Water Board or Water Quality Board to have its drinking water or wastewater project obligation or both, as desired, designated as covered by a credit enhancement agreement; and
    - (ii) have entered into a credit enhancement agreement with the Drinking Water Board or Water Quality Board setting forth the terms and conditions of the security or other forms of assistance provided by the agreement.
  - (b) The Drinking Water Board and Water Quality Board may not designate any drinking water or wastewater project obligation as covered by the credit enhancement agreement:

- (i) unless immediately after the designation there is on deposit in the security fund, based on the purchase or then market price of the investments therein, whichever is lower, an amount determined by the Drinking Water Board or Water Quality Board to be sufficient to:
      - (A) reasonably improve the security for and marketability of the drinking water or wastewater project obligation, or both; and
      - (B) comply with the terms and provisions of all existing credit enhancement agreements; and
    - (ii) while held by the state, any agency of the state, the federal government, or any agency of the federal government.
  - (c) A drinking water project obligation may not be designated as covered by a credit enhancement agreement unless the drinking water project for which it was issued by the political subdivision has been approved by the Department of Environmental Quality, acting through the Drinking Water Board.
  - (d) A wastewater project obligation may not be designated as secured by a credit enhancement unless the wastewater project for which it was issued by the political subdivision has been approved by the Department of Environmental Quality, acting through the Water Quality Board.
- (3)
- (a) A credit enhancement agreement must provide that the security provided under this chapter and the credit enhancement agreement:
    - (i) is limited to the money available in the security fund; and
    - (ii) does not constitute a pledge of or charge against the general revenues, credit, or taxing powers of the state or any political subdivision.
  - (b) A credit enhancement agreement which obligates the state to pay principal of or interest on any drinking water or wastewater project obligation, including any credit enhancement agreement entered into under Section 73-10c-4, may provide that:
    - (i) the political subdivision or its agent will notify the council whenever it is not able to pay principal of or interest on the drinking water or wastewater project obligation covered by the credit enhancement agreement and request payment from the security fund; and
    - (ii) money in the security fund needed to make the payment requested by the political subdivision may be segregated within the security fund and held until the requested payment is made.
  - (c) A default of the political subdivision under the drinking water or wastewater project obligation may not alter, in any manner, the obligations of the state as provided in the credit enhancement agreement.
  - (d) Any drinking water or wastewater project obligation covered by the credit enhancement agreement which is represented by a bond, note, or other written instrument shall bear a legend which states these provisions and makes reference to this chapter and the credit enhancement agreement pursuant to which the obligation is secured.
- (4) Any credit enhancement agreement for a drinking water or wastewater project obligation may provide that the Drinking Water Board or Water Quality Board:
- (a) purchase from the money in the security fund the obligation which the political subdivision is unable to pay, whereupon the Drinking Water Board or Water Quality Board, on behalf of the state, will become the holder of the obligation and entitled to all rights of a holder under the terms of the obligation;
  - (b) pay, as a loan to the political subdivision from the money in the security fund, to the holder of the obligation the principal or interest, or both, due or to become due on the obligation which the political subdivision is unable to pay;

- (c) take both actions referred to in Subsections (4)(a) and (b) relating to any issue of obligations; or
  - (d) take any other action specified in or contemplated by the credit enhancement agreement.
- (5)
- (a) Any credit enhancement agreement must require that the political subdivision repay to the state any loan of money made from the security fund to make any payments specified in the credit enhancement agreement, which repayment obligation may also be evidenced by bonds or notes of the political subdivision, as the Drinking Water Board or Water Quality Board may determine.
  - (b) The loan may be for a term, may bear interest at a rate or rates or may bear no interest, as the Drinking Water Board or Water Quality Board may determine, and may be secured by any security the Drinking Water Board or Water Quality Board may determine.
  - (c) The interest rate for any loan contemplated by, but not made at the time the credit enhancement agreement is executed, may be specified in relationship to a prime rate or other identifiable rate existing at the time the loan is made.
  - (d) The term of the loan may be specified in the credit enhancement agreement as a maximum term and the actual term stated when the loan is made.
  - (e) Any security for the loan may include:
    - (i) a pledge of the revenues from the particular drinking water project or wastewater project;
    - (ii) an assignment from the holder or holders of the drinking water or wastewater project obligation of the holders' interest in any security for the obligation in the amount needed to service the indebtedness represented by the loan; or
    - (iii) any other security device.
  - (f) The Drinking Water Board or Water Quality Board, on behalf of the state, is subrogated to all rights of the holder of the drinking water or wastewater project obligation against the political subdivision which issued the obligation with respect to the collection of the amount of the loan, but the state is not relieved by this subrogation from its obligation to make payments from the security fund as provided in its credit enhancement agreement with the political subdivision.
- (6) Prior to entering into a credit enhancement agreement, the Drinking Water Board or Water Quality Board shall obtain an opinion of counsel experienced in bond matters to the effect that the drinking water or wastewater project obligation to be purchased or with respect to which a loan is to be made, is a valid and binding obligation of the political subdivision which issued it.
- (7) Prior to making any payment under the credit enhancement agreement, the Drinking Water Board or Water Quality Board shall:
- (a) verify the correctness of the information in any notification referred to in Subsection (3); and
  - (b) determine that funds in the security fund are adequate to purchase the drinking water or wastewater project obligations or to make any loan of funds provided by the credit enhancement agreement.

Amended by Chapter 175, 2001 General Session

### **73-10c-7 Use of deposits in security fund.**

All money and investments on deposit in the security fund shall be held for the purposes for which the security fund is established, as provided in this chapter, and may not be used for any other purpose.

Amended by Chapter 175, 2001 General Session

### **73-10c-8 Rules.**

The board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this chapter, including the application by political subdivisions for the securing of their drinking water or wastewater project obligations, the approval of obligations to be secured, the verification of notices with respect to inability of political subdivisions to pay principal and interest, and the credit enhancement agreements with political subdivisions setting forth the terms and conditions under which obligations may be secured under this chapter.

Amended by Chapter 382, 2008 General Session

### **73-10c-9 Investments of money in security fund.**

- (1) Unless otherwise required to preserve the exemption of any obligations of the state from federal taxation, the state treasurer shall invest the money in the security fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.
- (2) If necessary to preserve the exemption of any obligations of the state from federal taxation, the board may make investments in any manner necessary to preserve this exemption.

Amended by Chapter 175, 2001 General Session

### **73-10c-10 Origination fee.**

- (1) The Drinking Water Board and the Water Quality Board may establish an origination fee for a loan to fund the administration of the programs created by this chapter by following the procedures and requirements of Section 63J-1-504.
- (2) The Drinking Water Board may establish an origination fee for a federally funded loan to fund the administration of programs allowed by 42 U.S.C. Sec. 300j-12, and regulations created thereunder, by following the procedures and requirements of Section 63J-1-504.
- (3) An origination fee established in accordance with this section shall be part of the department fee schedule established under Section 19-1-201.
- (4) Notwithstanding the requirements of Section 63J-1-504, the board shall deposit a fee paid in accordance with this section in the origination fee subaccount created in Section 73-10c-5 and use the fee to administer this chapter.
- (5) The loan recipient may pay the origination fee from the loan proceeds.

Amended by Chapter 104, 2011 General Session

## **Chapter 10d Utah Privatization Act**

### **73-10d-1 Public policy.**

The Legislature declares that the policy of this state is to assure its citizens adequate public services, including drinking water, water, and wastewater collection, treatment and disposal at reasonable cost. Adequate public services are essential to the maintenance and general welfare of the citizens of this state and to the continued expansion of the state's economy, job market, and industrial base.

The cost of constructing, owning, and operating capital facilities to meet the anticipated growth in the demand for those public services is becoming increasingly burdensome to political subdivisions, particularly to the smaller communities of the state.

It is desirable that innovative financing mechanisms be made available to assist the communities of this state to develop capital facilities to provide adequate public services at reasonable cost. Private sector ownership and operation of capital facilities providing public services together with industrial development revenue bond financing of those facilities, can result in cost savings to communities contracting for those public services.

It is in the best public interest of the state and its citizens that political subdivisions be authorized to provide public services by access to facilities owned and operated by private persons and financed through the issuance of industrial development revenue bonds, and to contract with private persons for the long-term provision of the services of those facilities.

Amended by Chapter 245, 1985 General Session

### **73-10d-2 Citation of chapter.**

This act shall be known and may be cited as the "Utah Privatization Act."

Enacted by Chapter 19, 1984 Special Session 2

### **73-10d-3 Definitions.**

As used in this chapter:

- (1) "Agreement" means a short-term agreement or a long-term agreement.
- (2) "Bonds" means obligations issued by a municipality or a county under Title 11, Chapter 17, Utah Industrial Facilities and Development Act, and the provisions of this chapter.
- (3) "Cost" means, with respect to any privatization project or facility related thereto, without limitation:
  - (a) all costs of designing, planning, acquiring, constructing, reconstructing, modifying, improving, maintaining, equipping, extending, furnishing, and placing in service any privatization project, including architectural, planning, engineering, legal, and fiscal advisors' fees or costs, and any costs incident to the acquisition of any necessary property, easement, or right-of-way;
  - (b) any costs incurred for preliminary planning to determine the economic or engineering feasibility of a proposed privatization project, including, without limitation, costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications, and inspection and supervision of the construction of any facility;
  - (c) all costs incident to the purchase, installation, or financing of equipment, machinery, and other personal property required by a privatization project;
  - (d) all costs incident to the authorization and issuance of bonds, including accountants' fees, attorneys' fees, financial advisors' fees, underwriting fees, including bond discount, and other professional services and printing costs;
  - (e) all costs incident to the establishment and funding of appropriate reserve funds; and
  - (f) interest estimated to accrue on any bonds issued to finance a privatization project for a reasonable period of time prior to construction, during construction, and for a reasonable period of time after construction.
- (4) "Drinking water project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses which has at least 15 service connections or serves an average of 25 individuals daily for at least 60 days of the year and includes collection, treatment, storage, and distribution facilities under the control of the private owner/

operator and used primarily with the work or facility, and collection, pretreatment, or storage facilities used primarily in connection with the work or facility but not under the control of the private owner/operator, and any related structures and facilities.

- (5) "Facility" means any structure, building, machinery, system, land, water right, or other property necessary or desirable to provide the services contemplated by a privatization project, including, without limitation, all related and appurtenant easements and rights-of-way, improvements, utilities, landscaping, sidewalks, roads, curbs and gutters, and equipment and furnishings.
- (6) "Governing authority" means the persons, board, body, or entity in which the legislative powers of a political subdivision are vested.
- (7) "Governing body" means the body in which the general legislative powers of a municipality or county are vested.
- (8) "Long-term agreement" means an agreement or contract having a term of more than five years and less than 50 years.
- (9) "Municipality" means any incorporated city or town in the state, including cities or towns operating under home rule charters.
- (10) "Political subdivision" means the state or any municipality, county improvement district, water conservancy district, special service district, drainage district, metropolitan water district, irrigation district, separate legal or administrative entity created under the Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of the state.
- (11) "Private owner/operator" means a person that is not a political subdivision and which owns and operates a privatization project.
- (12) "Privatization project" means all or part of any drinking water, water, or wastewater project which is owned or operated by a private owner/operator, and provides the related services to political subdivisions.
- (13) "Short-term agreement" means any contract or agreement having a term of five years or less.
- (14) "Supervising agency" means the Water Development Coordinating Council created in Section 73-10c-3.
- (15) "Wastewater project" means any sewer, sewage system, sewage treatment facility, lagoon, sewage collection facility and system and related pipelines, and all similar systems, works, and facilities necessary or desirable to collect, hold, cleanse, or purify any sewage or other polluted waters of this state, and related structures and facilities.
- (16) "Water project" means any work or facility necessary or desirable to conserve, develop, protect, or treat the waters of this state including, without limitation, any reservoir, diversion dam, electrical generation system, irrigation dam and system, culinary water system, water work, water treatment facility, canal, ditch, artesian well, aqueduct, pipeline, conduit, drain, tunnel, and related structures and facilities.
- (17) "Waters of this state" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, irrigation system, drainage system, or other body or accumulation of water, whether surface, underground, natural, artificial, public or private, or other water resource of the state, which is contained within or flows in or through the state.

Amended by Chapter 93, 1990 General Session

**73-10d-4 Notice of intention to enter privatization project -- Petition for election -- Election procedures -- Powers of political subdivision -- Public bidding laws not to apply.**

- (1) The governing authority of any political subdivision considering entering into a privatization project agreement shall issue a notice of intention setting forth a brief summary of the

agreement provisions and the time within which and place at which petitions may be filed requesting the calling of an election in the political subdivision to determine whether the agreement should be approved. The notice of intention shall specify the form of the petitions. If, within 30 days after the publication of the notice of intention, petitions are filed with the clerk, recorder, or similar officer of the political subdivision, signed by at least 5% of the qualified electors of the political subdivision (as certified by the county clerks of the respective counties within which the political subdivision is located) requesting an election be held to authorize the agreement, then the governing authority shall proceed to call and hold an election. If an adequate petition is not filed within 30 days, the governing authority may adopt a resolution so finding and may proceed to enter into the agreement.

- (2) If, under Subsection (1), the governing authority of a political subdivision is required to call an election to authorize an agreement, the governing authority shall adopt a resolution directing that an election be held in the political subdivision for the purpose of determining whether the political subdivision may enter into the agreement. The resolution calling the election shall be adopted, notice of the election shall be given, voting precincts shall be established, the election shall be held, voters' qualifications shall be determined, and the results shall be canvassed in the manner and subject to the conditions provided for in Title 11, Chapter 14, Local Government Bonding Act.
- (3) A political subdivision may, upon approval of an agreement as provided by Subsections (1) and (2) and subject to the powers and rules of the supervising agency:
  - (a) supervise and regulate the construction, maintenance, ownership, and operation of all privatization projects within its jurisdiction or in which it has a contractual interest;
  - (b) contract, by entry into agreements with private owner/operators for the provision within its jurisdiction of the services of privatization projects;
  - (c) levy and collect taxes, as otherwise provided by law, and impose and collect assessments, fees, or charges for services provided by privatization projects, as appropriate, and, subject to any limitation imposed by the constitution, pledge, assign, or otherwise convey as security for the payment of its obligations under any agreements any revenues and receipts derived from any assessments, fees, or charges for services provided by privatization projects;
  - (d) require the private owner/operator to obtain any and all licenses as appropriate under federal, state, and local law and impose other requirements which are necessary or desirable to discharge the responsibility of the political subdivision to supervise and regulate the construction, maintenance, ownership, and operation of any privatization project;
  - (e) control the right to contract, maintain, own, and operate any privatization project and the services provided in connection with that project within its jurisdiction;
  - (f) purchase, lease, or otherwise acquire all or any part of a privatization project;
  - (g) with respect to the services of any privatization project, control the right to establish or regulate the rates paid by the users of the services within the jurisdiction of the political subdivision;
  - (h) agree that the sole and exclusive right to provide the services within its jurisdiction related to privatization projects be assumed by any private owner/operator;
  - (i) contract for the lease or purchase of land, facilities, equipment, and vehicles for the operation of privatization projects;
  - (j) lease, sell, or otherwise convey, as permitted by state and local law, but without any requirement of competitive public bidding, land, facilities, equipment, and vehicles, previously used in connection with privatization projects, to private owner/operators; and



- (k) establish policies for the operation of any privatization project within its jurisdiction or with respect to which it has a contractual interest, including hours of operation, the character and kinds of services, and other rules necessary for the safety of operating personnel.
- (4) Any political subdivision may enter into agreements with respect to privatization projects. Agreements may contain provisions relating to, without limitation, any matter provided for in this section or consistent with the purposes of this chapter.
- (5) Any agreement entered into between a political subdivision and a private owner/operator for the provision of the services of a privatization project is considered an exercise of that political subdivision's business or proprietary power binding upon its succeeding governing authorities. Any agreement made by a political subdivision with a private owner/operator for payment for services provided or to be provided may not be construed to be an indebtedness or a lending of credit of the political subdivision within the meaning of any constitutional or statutory restriction.
- (6) The provisions of the various laws of the state and the rules or ordinances of a political subdivision which would otherwise require public bidding in respect to any matter provided for in this chapter shall have no application to that matter.

Amended by Chapter 105, 2005 General Session

**73-10d-5 Bond issues -- Debt not authorized -- Project not a public utility -- Financing as an industrial facility.**

- (1) The governing body of any municipality or county may, under Title 11, Chapter 17, Utah Industrial Facilities and Development Act, and this chapter, issue bonds to finance the costs of privatization projects within or partially within its own jurisdiction, on behalf of private owner/operators, all pursuant to contracts and other arrangements provided for in the proceedings under which the bonds are issued. Privatization projects shall provide services to one or more political subdivisions, which may include the municipality or county issuing bonds.
- (2) All bonds issued under this chapter shall be limited obligations of the municipality or county issuing the bonds. Bonds issued under this chapter or interest on them do not constitute nor give rise to a general obligation of the state, the issuer of the bonds, or any other political subdivision, nor are they a charge against the general credit or taxing powers of the state, the issuer, or any other political subdivision. This limitation shall be plainly stated on the face of the bonds. The bonds are not payable from any funds other than those of the municipality or county that shall be specifically pledged for that purpose in accordance with this chapter and Title 11, Chapter 17, Utah Industrial Facilities and Development Act.
- (3) All expenses incurred in carrying out any provision of this chapter with respect to a privatization project are payable solely as provided under this chapter, and nothing in this chapter shall be construed to authorize the issuer of bonds to incur indebtedness or liability on behalf of or payable by the state or any political subdivision.
- (4) A privatization project or its private owner/operator is not a "public utility" for any purpose of Title 54, Chapter 2, Definitions, with respect to any privatization project or the services provided thereby.
- (5) For purposes of Title 11, Chapter 17, Utah Industrial Facilities and Development Act, a privatization project is a "project" as defined in Section 11-17-2.

Amended by Chapter 93, 1990 General Session

**73-10d-6 Contents of agreements and reports required where bonds are issued that mature more than 10 years after project begins operation.**

- (1) If a municipality or county issues bonds to finance the cost of a privatization project and the bonds mature more than 10 years after the privatization project begins operation, the political subdivision contracting with a private owner/operator for the services of the privatization project shall assure that the minimum level of services under contract, payment for the services, and the supply of drinking water, water, or wastewater required in connection with the provision of those services will be sufficient to generate enough income, after payment of operating expenses, to fund reserves for repair and replacement, and to discharge any other obligation of the political subdivision to the private owner/operator under any agreement, and together with all other sources of revenue pledged for payment of the bonds, to pay all principal and interest on the bonds during the term of the bonded indebtedness. The assurance may take the form of:
  - (a) long-term agreements, at least equal to the period of the bonded indebtedness, with other political subdivisions or other persons; or
  - (b) ordinances, franchises, or other forms of regulation requiring sufficient quantities of drinking water, water, or wastewater.
- (2) The supervising agency shall establish rules for periodic reporting by any political subdivision that establishes ordinances, franchises, or other forms of regulation under Subsection (1) and Subsection 73-10d-4(3). The reports shall include information about the services being provided by the privatization project and whether the charges made for those services together with all other sources of revenue pledged for the payment of principal and interest on the bonds, are sufficient to meet the debt service on the bonds.

Amended by Chapter 245, 1985 General Session

**73-10d-7 Agreements by political subdivisions for privatization projects -- Joint interests.**

- (1) Any one or more political subdivisions, or the United States or any of its agencies, may enter into long-term agreements with any person for joint or cooperative action related to the acquisition, construction, maintenance, ownership, operation, and improvement of privatization projects in accordance with the terms, conditions, and consideration provided in any long-term agreements. Any payments made by a political subdivision under a long-term agreement for joint or cooperative action may not be construed to be an indebtedness of or a lending of the credit of the political subdivision within the meaning of any constitutional or statutory restriction, and, except as required by this chapter and the constitution, no election is necessary for the authorization of any long-term agreement for joint or cooperative action.
- (2) Any one or more political subdivisions may construct, purchase, or otherwise acquire joint interests in any privatization project or any part of a privatization project, for common use with any private entity or other political subdivision, or may sell or lease to any other political subdivision or person a partial interest in a privatization project. Political subdivisions may finance their joint interests in privatization projects in the manner provided for and subject to Title 11, Chapter 14, Local Government Bonding Act, if otherwise eligible thereunder to finance capital improvement.

Amended by Chapter 105, 2005 General Session

**Chapter 10e**  
**Water Development and Flood Mitigation Reserve Account**

**73-10e-1 Creation of Water Development and Flood Mitigation Reserve Account -- Appropriation.**

- (1) There is created within the General Fund a restricted account known as the "Water Development and Flood Mitigation Reserve Account."
- (2) There is appropriated for fiscal year 1984-85 \$55,000,000 from the General Fund and \$6,000,000 from certificates of participation to the Water Development and Flood Mitigation Reserve Account. This appropriation may not lapse and shall carry over to fiscal year 1985-86.
- (3) There is appropriated for fiscal year 1985-86 \$35,000,000 from the General Fund to the Water Development and Flood Mitigation Reserve Account.
- (4) There is appropriated for fiscal year 1984-85 \$4,050,000 from the Water Development and Flood Mitigation Reserve Account to the Division of Water Resources to use for all of the following:
  - (a) \$2,000,000 for final engineering studies for west desert pumping;
  - (b) \$500,000 for implementation of the State Water Plan, including, but not limited to, engineering studies on Bear River upstream diversion and storage projects and Hatch Town Reservoir;
  - (c)
    - (i) \$750,000 to prepare final design reports and cost estimates for the following:
      - (A) Option A - No. Davis WWTP, West Kaysville, Centerville, Bard, West Bountiful, So. Davis No. WWTP, Phillips, Woods Cross, Jordan River WWTP, and the Salt Lake International Airport; and
      - (B) Option B - Antelope Island roadway dikes.
    - (ii) It is the intent of the Legislature to choose between Options A and B after the final design reports are completed. The final design reports for Option B shall be completed by consultants other than those who prepared the original report. The reports for both Options A and B shall clearly indicate the following for each alternative:
      - (A) estimated construction costs;
      - (B) estimated costs of operation and maintenance;
      - (C) estimated time necessary for completion;
      - (D) benefits with respect to flood control, tourism, recreation, long-term second use, and new access to Antelope Island and marsh lands; and
      - (E) impact on roads and esthetic land features during construction.
  - (d) \$250,000 to prepare final design reports for the following projects: Corrine-WWTP, Plain City-WWTP, Perry-WWTP, and Little Mtn.-WWTP;
  - (e) \$500,000 to construct the South Shore project; and
  - (f) \$50,000 to reevaluate inter-island diking between South Shore, Antelope Island, Fremont Island, and Promontory Point.
- (5) There is appropriated for fiscal year 1984-85 \$16,300,000 from the Water Development and Flood Mitigation Reserve Account to the Community Development/Disaster Relief Board for the following:
  - (a) \$4,000,000 to use as a match on diking projects built by the Army Corps of Engineers; and
  - (b)
    - (i) \$12,300,000 to provide grants to appropriate governmental entities to increase the carrying capacity of the Jordan River. The grants shall be made without requiring matching funds from any other governmental entity and shall only be made if an agreement is entered into by the affected governmental entities resolving disputed issues of responsibility. It is the intent of the Legislature to consider the distribution of the 1/8% sales and use tax increase as the contribution from the affected governmental entities.

- (ii) Any portion of the \$12,300,000 appropriated under Subsection (5)(b)(i) which is not used for the purposes described in that subsection shall be transferred to the Division of Parks and Recreation for the purposes described in Section 79-4-802. After this money is transferred to the Division of Parks and Recreation, the money is nonlapsing. The money may not be used for any project specified by the Division of Parks and Recreation until the political subdivision having jurisdiction over the appropriate area contributes 50% of the costs of the project to the state. This contribution may be in the form of money, property, or services, or any combination of these, which can be used for the specified project.
- (6) Interest accrued on the money appropriated into the Water Development and Flood Mitigation Reserve Account shall be deposited into the Water Resources Conservation and Development Fund as the interest accrues.
- (7) All money not appropriated from the Water Development and Flood Mitigation Reserve Account by September 1, 1985, shall be deposited into the Water Resources Conservation and Development Fund.

Amended by Chapter 344, 2009 General Session

**73-10e-2 Requirement to obtain rights-of-way and easements.**

It is the intent of the Legislature that the money appropriated into the Water Development and Flood Mitigation Reserve Account in Section 73-10e-1 may not be spent for construction of dikes until all necessary rights-of-way and easements are obtained for each individual diking project by the impacted local government entities in which the diking projects are located.

Amended by Chapter 20, 1995 General Session

**73-10e-3 Requirement to provide engineering studies.**

Local government entities in which the projects described in Subsection 73-10e-1(4)(c)(i)(A) and Subsection 73-10e-1(4)(d) are located, shall immediately make all engineering studies which may be useful for the final design and construction of the projects, available to the state at no cost to the state.

Amended by Chapter 20, 1995 General Session

**73-10e-4 Authority to transfer funds.**

The Division of Water Resources may transfer money to the Department of Transportation, as necessary under this chapter, to construct projects whose purposes are primarily to protect state highways or to study or construct Option B set forth in Subsection 73-10e-1(4)(c)(i)(B).

Amended by Chapter 20, 1995 General Session

## **Chapter 10f Bear River Development**

**73-10f-1 Definitions.**

As used in this chapter:

- (1) "Division" means the Division of Water Resources.

- (2) "Task force" means the Joint Gubernatorial/Legislative Task Force on the Bear River created in Laws of Utah 1989, Chapter 158.

Amended by Chapter 250, 2008 General Session

**73-10f-2 Bear River feasibility studies.**

- (1) The division is directed to undertake a study of the feasibility of developing the Bear River. This study shall include the following components:
- (a) an assessment of present water supplies, uses, and rights and future water needs in counties within the Bear River Basin and along the Wasatch Front;
  - (b) an evaluation of alternative dam and reservoir sites;
  - (c) a review of preliminary design work;
  - (d) an update of the cost estimates;
  - (e) an assessment of environmental impacts;
  - (f) water quality analyses; and
  - (g) financial and economic analyses.
- (2) The division shall:
- (a) report to the task force on the progress of the studies upon the request of the chairmen; and
  - (b) report its interim conclusions and recommendations to the task force by October 31, 1990, and its final conclusions and recommendations by October 31, 1991.

Enacted by Chapter 206, 1990 General Session

## **Chapter 11**

### **Consolidation of Water Companies and Conservation Districts**

**73-11-1 Powers and duties of School and Institutional Trust Lands Administration -- Consolidation -- Purpose.**

- (1) The School and Institutional Trust Lands Administration of the state is hereby authorized to merge and consolidate the properties, rights, privileges, and franchises acquired by the state through foreclosures of the mortgage of the Carbon Water Company to the state with the properties, rights, privileges, and franchises of the Price River water conservation district, the Wellington Canal Company, Bryner Plantz Ditch, Bryner Hansen Ditch, Lyn Ditch, Spring Glen Canal, Oberto Ditch, Marchello Ditch, Stowell Canal, Cook Ditch, Price Water Company, Pioneer Ditch Number Two, Allred Ditch, Pioneer Ditch Number One, Carbon Water Company, Tidwell Canal, Snyder Ditch, being all corporations of a similar nature, and others having or owning storage rights in the reservoir of the Price River water conservation district, situated in Carbon and Emery Counties, Utah, pursuant to Title 16, Chapter 10a, Part 11, Merger and Share Exchange, to the end that greater efficiency in the preservation and distribution of water and greater economy of management may be accomplished, and in order to effect the merger and consolidation the School and Institutional Trust Lands Administration is authorized to join in the execution of proper articles of merger and consolidation, providing all of the other constituent parties are duly and regularly authorized to join in the action.
- (2) The School and Institutional Trust Lands Administration may take and accept stock of the consolidated corporation of sufficient amount and of proper class in full payment for the

properties, rights, privileges, and franchises transferred and conveyed to the consolidated corporation.

Amended by Chapter 299, 1995 General Session

**73-11-2 Reserve stock for irrigating trust lands -- Sell or lease excess stock.**

The School and Institutional Trust Lands Administration shall have power, and it shall be its duty:

- (1) in the event the merger and consolidation is effected, to reserve and hold an amount of the capital stock of the consolidated corporation as will supply a water right for all lands owned by the state and capable of irrigation from the canals, ditches, or distribution system of the consolidated corporation; and
- (2) to sell or lease all excess stock upon such terms as it may consider best to persons owning land capable of being irrigated from the canals, ditches, or distributing system of the consolidated corporation.

Amended by Chapter 299, 1995 General Session

**73-11-3 Disposition of proceeds.**

The money derived from the sale or lease of such excess stock shall go to the reservoir land grant fund until the principal of the loan or loans made to the Carbon Water Company, or its predecessors, the interest thereon, and advances made by the state in connection therewith, are fully paid, and thereafter the money derived from the sale or lease of said stock go to the state school fund.

No Change Since 1953

**73-11-4 School and Institutional Trust Lands Administration to vote stock of consolidated district.**

In the event it is necessary for the consolidated corporation to borrow money for consolidation expenses, repairs, improvements, and operation, and to pay the indebtedness of the Price River water conservation district or any of the constituent companies, and to pledge or mortgage all or any part of the assets and properties of the consolidated corporation as security therefor, the School and Institutional Trust Lands Administration is authorized to vote the stock of the state in favor of the action, providing it considers the action to be in the best interest of all the constituent parties.

Amended by Chapter 299, 1995 General Session

## **Chapter 12**

### **Utah Lake Diking Project**

**73-12-1 Governor authorized to convey to the United States lands or interests in said lands in bed of or on margin of Utah Lake.**

For the purpose of cooperating with and assisting the United States of America in developing the water resources of this state, the governor of the state of Utah is hereby authorized to grant

and convey to the United States of America by deed or deeds or other appropriate instrument or instruments such right, title and interest which the state of Utah now has or which it may acquire in and to the lands herein described, or of any part of the same, and/or to grant and convey any easement or right of way in, upon or across any such state lands as may be necessary or desirable in connection with the construction by the United States of America of any storage reservoir, dike or dikes, and/or other works for the development and use of water for irrigation and other purposes; provided, that the governor shall not make any such grants or conveyances until an agreement has been made by the United States of America with a water users' association, and/or other entity or entities for the construction of any of such works in connection with which is desired any grant or conveyance provided for in this act.

No Change Since 1953

### **73-12-2 Manner of executing and attesting deeds.**

All deeds or other instruments herein authorized to be executed shall be executed and attested in the manner in which patents to state lands are executed and attested.

No Change Since 1953

### **73-12-3 Description of land.**

The lands subject to this act are located in Utah county, state of Utah, and are described as follows, to wit:

All lands in the bed or on the margin of Utah Lake below elevation 4491.0 (U.S. Coast and Geodetic Survey Adjusted Datum 1922) within the following described boundary:

Beginning at the west quarter corner of sec. 19, T. 5 S., R. 1 E., S.L.B.&M., and running thence three miles east to the east quarter corner sec. 21, T. 5 S., R. 1 E.; thence one half mile south to southeast corner sec. 21, T. 5 S., R. 1 E.; thence one and one half miles east to south quarter corner sec. 23, T. 5 S., R. 1 E.; thence one mile south to south quarter corner sec. 26, T. 5 S., R. 1 E.; thence two and one-half miles east to northeast corner sec. 31, T. 5 S., R. 2 E.; thence four miles south to southeast corner sec. 18, T. 6 S., R. 2 E.; thence one mile east to northeast corner sec. 20, T. 6 S., R. 2 E.; thence one mile south to southeast corner sec. 20, T. 6 S., R. 2 E.; thence one mile east to northeast corner sec. 28, T. 6 S., R. 2 E.; thence three miles south to northeast corner sec. 9, T. 7 S., R. 2 E.; thence one mile east to northeast corner sec. 10, T. 7 S., R. 2 E.; thence one mile south to southeast corner sec. 10, T. 7 S., R. 2 E.; thence three miles east to northeast corner sec. 18, T. 7 S., R. 3 E.; thence four miles south to southeast corner sec. 31, T. 7 S., R. 3 E.; thence three and one-half miles west to south quarter corner sec. 34, T. 7 S., R. 2 E.; thence one-half mile south to center of sec. 3, T. 8 S., R. 2 E.; thence one and one-half miles west to east quarter corner sec. 5, T. 8 S., R. 2 E.; thence one mile south to east quarter corner sec. 8, T. 8 S., R. 2 E.; thence one and one-half miles west to center of sec. 7, T. 8 S., R. 2 E.; thence one and one-half miles south to south quarter corner sec. 18, T. 8 S., R. 2 E.; thence four and one-half miles west to northeast corner sec. 20, T. 8 S., R. 1 E.; thence four miles south to southeast corner sec. 5, T. 9 S., R. 1 E.; thence one mile west to southwest corner sec. 5, T. 9 S., R. 1 E.; thence three miles south to southeast corner sec. 19, T. 9 S., R. 1 E.; thence four and one-half miles west to south quarter corner sec. 21, T. 9 S., R. 1 W.; thence 11 miles north to north quarter corner sec. 33, T. 7 S., R. 1 W.; thence one and one-half miles east to northeast corner sec. 34, T. 7 S., R. 1 W.; thence one mile north to northwest corner sec. 26, T. 7 S., R. 1 W.; thence one-half mile, more or less, east to southwest corner sec. 24, T. 7 S., R. 1 W.; thence one mile north to northwest corner sec. 24, T. 7 S., R. 1 W.; thence one mile, more or less, east to northeast corner sec. 24,

T. 7 S., R. 1 W.; thence seven miles north to northwest corner sec. 18, T. 6 S., R. 1 E.; thence one mile west to southwest corner sec. 12, T. 6 S., R. 1 W.; thence two miles north to northwest corner sec. 1, T. 6 S., R. 1 W.; thence one-half mile west to south quarter corner sec. 35, T. 5 S., R. 1 W.; thence two and one-half miles north to center sec. 23, T. 5 S., R. 1 W.; thence one and one-half miles east to west quarter corner sec. 19, T. 5 S., R. 1 E. to the point of beginning.

No Change Since 1953

**73-12-4 Purposes for which land is to be used.**

Said lands to be used by the United States of America as aforesaid in connection with the development and use of water for irrigation and other purposes in this state under the provisions of the Act of Congress known as the Reclamation Act, approved June 17, 1902 (32 Stat. 388) and/or of the Act of Congress known as the National Industrial Recovery Act, approved June 16, 1933 (48 Stat. 195), and acts amendatory thereof or supplementary thereto.

No Change Since 1953

## **Chapter 12a Colorado River Compact**

**73-12a-1 Ratification.**

That certain compact and treaty approved by a representative of the United States of America and negotiated and entered into by representatives of the states of Utah, Wyoming, Colorado, New Mexico, Arizona, Nevada and California, sitting as the Colorado River Commission, which compact and treaty apportions the waters of the Colorado river, and which commission was created in conformity with Laws of Utah 1921, Chapter 68, and similar acts of the legislatures of the several respective states named and of the Congress of the United States, is hereby approved, confirmed, and ratified for and by the state of Utah.

Amended by Chapter 250, 2008 General Session

**73-12a-2 Text of compact.**

The text of said compact is as follows:

### **COLORADO RIVER COMPACT**

The states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, having resolved to enter into a compact under the Act of the Congress of the United States of America approved August 19, 1921 (42 Statutes at Large, page 171) and the acts of legislatures of the said states, have through their governors appointed as their commissioners:

W. S. Norviel for the state of Arizona,  
W. F. McClure for the state of California,  
Delph E. Carpenter for the state of Colorado,  
J. G. Scrugham for the state of Nevada,  
Stephen B. Davis, Jr., for the state of New Mexico,  
R. E. Caldwell for the state of Utah,  
Frank C. Emerson for the state of Wyoming,



who, after negotiations participated in by Herbert Hoover, appointed by the President as the representative of the United States of America, have agreed upon the following articles:

#### ARTICLE I

The major purposes of this compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System; to establish the relative importance of different beneficial uses of water; to promote interstate comity; to remove causes of present and future controversies; and to secure the expeditious agricultural and industrial development of the Colorado River Basin, the storage of its waters and the protection of life and property from floods. To these ends the Colorado River Basin is divided into two basins, and an apportionment of the use of part of the water of the Colorado River System is made to each of them with the provision that further equitable apportionment may be made.

#### ARTICLE II

As used in this compact:

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the states of Colorado, New Mexico, Utah and Wyoming.

(d) The term "States of the Lower Division" means the states of Arizona, California and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the states of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which waters naturally drain into the Colorado River System above Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system above Lee Ferry.

(g) The term "Lower Basin" means those parts of the states of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said states located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the system below Lee Ferry.

(h) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial and other like purposes, but shall exclude the generation of electrical power.

#### ARTICLE III

(a) There is hereby apportioned from the Colorado River System in perpetuity to the Upper Basin and to the Lower Basin, respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum, which shall include all water necessary for the supply of any right which may now exist.

(b) In addition to the apportionment in paragraph (a), the Lower Basin is hereby given the right to increase its beneficial consumptive use of such waters by one million acre feet per annum.

(c) If, as a matter of international comity, the United States of America shall hereafter recognize in the United States of Mexico any right to the use of any water of the Colorado River System, such waters shall be supplied first from the waters which are surplus over and above the aggregate of the quantities specified in paragraphs (a) and (b); and if such surplus shall prove

insufficient for this purpose, then, the burden of such deficiency shall be equally borne by the Upper Basin and the Lower Basin, and whenever necessary the states of the Upper Division shall deliver at Lee Ferry water to supply one-half of the deficiency so recognized in addition to that provided in paragraph (d).

(d) The states of the Upper Division will not cause the flow of the river at Lee Ferry to be depleted below an aggregate of 75,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification of this compact.

(e) The states of the Upper Division shall not withhold water, and the states of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses.

(f) Further equitable apportionment of the beneficial uses of the waters of the Colorado River System unapportioned by paragraphs (a), (b) and (c) may be made in the manner provided in paragraph (g) at any time after October first, 1963, if and when either basin shall have reached its total beneficial consumptive use as set out in paragraphs (a) and (b).

(g) In the event of a desire for a further apportionment as provided in paragraph (f) any two signatory states, acting through their governors, may give joint notice of such desire to the governors of the other signatory states and to the President of the United States of America, and it shall be the duty of the governors of the signatory states and of the President of the United States of America forthwith to appoint representatives, whose duty it shall be to divide and apportion equitably between the Upper Basin and Lower Basin the beneficial use of the unapportioned water of the Colorado River System as mentioned in paragraph (f), subject to the legislative ratification of the signatory states and the Congress of the United States of America.

#### ARTICLE IV

(a) Inasmuch as the Colorado River has ceased to be navigable for commerce and the reservation of its waters for navigation would seriously limit the development of its basin, the use of its waters for purposes of navigation shall be subservient to the uses of such waters for domestic, agricultural and power purposes. If the Congress shall not consent to this paragraph, the other provisions of this compact shall nevertheless remain binding.

(b) Subject to the provisions of this compact, water of the Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(c) The provisions of this article shall not apply to or interfere with the regulation and control by any state within its boundaries of the appropriation, use and distribution of water.

#### ARTICLE V

The chief official of each signatory state charged with the administration of water rights, together with the director of the United States Reclamation Service and the director of the United States Geological Survey shall co-operate, ex officio:

(a) To promote the systematic determination and co-ordination of the facts as to flow, appropriation, consumption and use of water in the Colorado River Basin, and the interchange of available information in such matters.

(b) To secure the ascertainment and publication of the annual flow of the Colorado River at Lee Ferry.

(c) To perform such other duties as may be assigned by mutual consent of the signatories from time to time.

#### ARTICLE VI

Should any claim or controversy arise between any two or more of the signatory states: (a) with respect to the waters of the Colorado River System not covered by the terms of this compact; (b) over the meaning or performance of any of the terms of this compact; (c) as to the allocation of the burdens incident to the performance of any article of this compact or the delivery of waters as herein provided; (d) as to the construction or operation of works within the Colorado River Basin to be situated in two or more states, or to be constructed in one state for the benefit of another state; or (e) as to the diversion of water in one state for the benefit of another state; the governors of the states affected, upon the request of one of them, shall forthwith appoint commissioners with power to consider and adjust such claim or controversy, subject to ratification by the legislatures of the states so affected.

Nothing herein contained shall prevent the adjustment of any such claim or controversy by any present method or by direct future legislative action of the interested states.

#### ARTICLE VII

Nothing in this compact shall be construed as affecting the obligations of the United States of America to Indian tribes.

#### ARTICLE VIII

Present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact. Whenever storage capacity of 5,000,000 acre-feet shall have been provided on the main Colorado River within or for the benefit of the Lower Basin, then claims of such rights, if any, by appropriators or users of water in the Lower Basin against appropriators or users of water in the Upper Basin shall attach to and be satisfied from water that may be stored not in conflict with Article III.

All other rights to beneficial use of waters of the Colorado River System shall be satisfied solely from the water apportioned to that basin in which they are situate.

#### ARTICLE IX

Nothing in this compact shall be construed to limit or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

#### ARTICLE X

This compact may be terminated at any time by the unanimous agreement of the signatory states. In the event of such termination all rights established under it shall continue unimpaired.

#### ARTICLE XI

This compact shall become binding and obligatory when it shall have been approved by the legislatures of each of the signatory states and by the Congress of the United States. Notice of approval by the legislatures shall be given by the governor of each signatory state to the governors of the other signatory states and to the President of the United States, and the President of the United States is requested to give notice to the governors of the signatory states of approval by the Congress of the United States.

In Witness Whereof, the commissioners have signed this compact in a single original, which shall be deposited in the archives of the Department of State of the United States of America and of which a duly certified copy shall be forwarded to the governor of each of the signatory states.

Done at the city of Santa Fe, New Mexico, this twenty-fourth day of November, A.D. one thousand nine hundred and twenty-two.

(s) W. S. Norviel.  
(s) W. F. McClure.  
(s) Delph E. Carpenter.  
(s) J. G. Scrugham.  
(s) Stephen B. Davis, Jr.

(s) R. E. Caldwell.  
(s) Frank C. Emerson.

Approved:  
Herbert Hoover.

No Change Since 1953

**73-12a-3 Original compact -- Act as ratified.**

The compact and treaty ratified by this act is the original signed by members of the Colorado River Commission, approved by a representative of the United States of America, and deposited in the archives of the Department of State of the United States at Washington, D.C. Any error made in copying the original compact and treaty as in Section 73-12a-2 hereof shall be held not to invalidate this ratification or compact and treaty in any way.

No Change Since 1953

## **Chapter 13**

### **Upper Colorado River Basin Compact**

**73-13-9 Ratification of compact.**

The Upper Colorado River Basin Compact entered into at Santa Fe, New Mexico, on October 11, 1948, by the Upper Colorado River Basin States, namely, Arizona, Colorado, New Mexico, Utah and Wyoming, by the representatives of those states, with the approval of the representative of the United States of America, is hereby unconditionally ratified, approved and confirmed for and by the state of Utah.

No Change Since 1953

**73-13-10 Text of compact.**

The text of said Compact is as follows:

The State of Arizona, the State of Colorado, the State of New Mexico, the State of Utah and the State of Wyoming, acting through their Commissioners,

Charles A. Carson for the State of Arizona,  
Clifford H. Stone for the State of Colorado,  
Fred E. Wilson for the State of New Mexico,  
Edward H. Watson for the State of Utah and  
L. C. Bishop for the State of Wyoming,

after negotiations participated in by Harry W. Bashore, appointed by the President as the representative of the United States of America, have agreed, subject to the provisions of the Colorado River Compact, to determine the rights and obligation of each signatory state respecting the uses and deliveries of the water of the Upper Basin of the Colorado River, as follows:

#### **ARTICLE I**

(a) That major purposes of this Compact are to provide for the equitable division and apportionment of the use of the waters of the Colorado River System, the use of which was apportioned in perpetuity to the Upper Basin by the Colorado River Compact; to establish the obligations of each state of the Upper Division with respect to the deliveries of water required to

be made at Lee Ferry by the Colorado River Compact; to promote interstate comity; to remove causes of present and future controversies; to secure the expeditious agricultural and industrial development of the Upper Basin, the storage of water and to protect life and property from floods.

(b) It is recognized that the Colorado River Compact is in full force and effect and all of the provisions hereof are subject thereto.

## ARTICLE II

As used in this Compact:

(a) The term "Colorado River System" means that portion of the Colorado River and its tributaries within the United States of America.

(b) The term "Colorado River Basin" means all of the drainage area of the Colorado River System and all other territory within the United States of America to which the waters of the Colorado River System shall be beneficially applied.

(c) The term "States of the Upper Division" means the States of Colorado, New Mexico, Utah and Wyoming.

(d) The term "States of the Lower Division" means the States of Arizona, California and Nevada.

(e) The term "Lee Ferry" means a point in the main stream of the Colorado River one mile below the mouth of the Paria River.

(f) The term "Upper Basin" means those parts of the States of Arizona, Colorado, New Mexico, Utah and Wyoming within and from which naturally drain into the Colorado River System above Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the Colorado River System above Lee Ferry.

(g) The term "Lower Basin" means those parts of the States of Arizona, California, Nevada, New Mexico and Utah within and from which waters naturally drain into the Colorado River System below Lee Ferry, and also all parts of said States located without the drainage area of the Colorado River System which are now or shall hereafter be beneficially served by waters diverted from the Colorado River System below Lee Ferry.

(h) The term "Colorado River Compact" means the agreement concerning the apportionment of the use of the waters of the Colorado River System dated November 24, 1922, executed by Commissioners for the States of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming, approved by Herbert Hoover, representative of the United States of America, and proclaimed effective by the president of the United States of America, June 25, 1929.

(i) The term "Upper Colorado River System" means that portion of the Colorado River System above Lee Ferry.

(j) The term "Commission" means the administrative agency created by Article VIII of this Compact.

(k) The term "water year" means that period of twelve months ending September 30 of each year.

(l) The term "acre-foot" means the quantity of water required to cover an acre to the depth of one foot and is equivalent to 43,560 cubic feet.

(m) The term "domestic use" shall include the use of water for household, stock, municipal, mining, milling, industrial, and other like purposes, but shall exclude the generation of electrical power.

(n) The term "virgin flow" means the flow of any stream undepleted by the activities of man.

## ARTICLE III

(a) Subject to the provisions and limitations contained in the Colorado River Compact and in this Compact there is hereby apportioned from the Upper Colorado River System in perpetuity to

the States of Arizona, Colorado, New Mexico, Utah and Wyoming, respectively, the consumptive use of water as follows:

- (1) To the State of Arizona the consumptive use of 50,000 acre-feet per annum.
- (2) To the States of Colorado, New Mexico, Utah and Wyoming, respectively the consumptive use per annum of the quantities resulting from the application of the following percentages to the total quantity of consumptive use per annum apportioned in perpetuity to and available for use each year by Upper Basin under the Colorado Compact and remaining after the deduction of the use, not to exceed 50,000 acre-feet per annum, made in the State of Arizona.
  - State of Colorado ..... 51.75 per cent,
  - State of New Mexico ..... 11.25 per cent,
  - State of Utah ..... 23.00 per cent,
  - State of Wyoming ..... 14.00 per cent

- (b) The apportionment made to the respective States by paragraph (a) of this Article is based upon, and shall be applied in conformity with, the following principles and each of them:
  - (1) The apportionment is of any and all man-made depletions;
  - (2) Beneficial use is the basis, the measure and the limit of the right to use;
  - (3) No State shall exceed its apportioned use in any water year when the effect of such excess use, as determined by the Commission, is to deprive another signatory State of its apportioned use during that water year; provided, that this subparagraph (b)(3) shall not be construed as:
    - (i) Altering the apportionment of use, or obligations to make deliveries as provided in Article XI, XII, XIII, or XIV of this Compact;
    - (ii) Purporting to apportion among the signatory States such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact; or
    - (iii) Countenancing average uses by any signatory State in excess of its apportionment.
  - (4) The apportionment to each State includes all water necessary for the supply of any rights which now exist.
  - (c) No apportionment is hereby made, or intended to be made, of such uses of water as the Upper Basin may be entitled to under paragraphs (f) and (g) of Article III of the Colorado River Compact.
  - (d) The apportionment made by this Article shall not be taken as any basis for the allocation among the signatory States of any benefits resulting from the generation of power.

ARTICLE IV

In the event curtailment of use of water by the States of the Upper Division at any time shall become necessary in order that the flow at Lee Ferry shall not be depleted below that required by Article III of the Colorado River Compact, the extent of curtailment by each State of the consumptive use of water apportioned to it by Article III of this Compact shall be in such quantities and at such times as shall be determined by the Commission upon the application of the following principles:

- (a) The extent and times of curtailment shall be such as to assure full compliance with Article III of the Colorado River Compact;
- (b) If any State or States of the Upper Division, in the ten years immediately preceding the water year in which curtailment is necessary, shall have consumptively used more water than it

was or they were, as the case may be, entitled to use under the apportionment made by Article III of this Compact, such State or States shall be required to supply at Lee Ferry a quantity of water equal to its, or the aggregate of their, overdraft or the proportionate part of such overdraft, as may be necessary to assure compliance with Article III of the Colorado River Compact, before demand is made on any other State of the Upper Division;

(c) Except as provided in subparagraph (b) of this Article, the extent of curtailment by each State of the Upper Division of the consumptive use of water apportioned to it by Article III of this Compact shall be such as to result in the delivery at Lee Ferry of a quantity of water which bears the same relation to the total required curtailment of use by the States of the Upper Division as the consumptive use of Upper Colorado River System water which was made by each such State during the water year immediately preceding the year in which the curtailment becomes necessary bears to the total consumptive use of such water in the States of the Upper Division during the same water year; provided, that in determining such relation the uses of water under rights perfected prior to November 24, 1922, shall be excluded.

#### ARTICLE V

(a) All losses of water occurring from or as the result of the storage of water in reservoirs constructed prior to the signing of this Compact shall be charged to the State in which such reservoir or reservoirs are located. Water stored in reservoirs covered by this paragraph (a) shall be for the exclusive use of and shall be charged to the State in which the reservoir or reservoirs are located.

(b) All losses of water occurring from or as the result of the storage of water in reservoirs constructed after the signing of this Compact shall be charged as follows:

(1) If the Commission finds that the reservoir is used, in whole or in part to assist the States of the Upper Division in meeting their obligations to deliver water at Lee Ferry imposed by Article III of the Colorado River Compact, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir capacity allocated for that purpose. The whole or that proportion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the reservoir or reservoir capacity utilized to assure deliveries at Lee Ferry shall be charged to the States of the Upper Division in the proportion which the consumptive use of water in each State of the Upper Division during the water year in which the charge is made bears to the total consumptive use of water in all States of the Upper Division during the same water year. Water stored in reservoirs or in reservoir capacity covered by this subparagraph (b)(1) shall be for the common benefit of all of the States of the Upper Division.

(2) If the Commission finds that the reservoir is used, in whole or in part, to supply water for use in a State of the Upper Division, the Commission shall make findings, which in no event shall be contrary to the laws of the United States of America under which any reservoir is constructed, as to the reservoir or reservoir capacity utilized to supply water for use and the State in which such water will be used. The whole or that proportion, as the case may be, of reservoir losses as found by the Commission to be reasonably and properly chargeable to the State in which such water will be used shall be borne by that State. As determined by the Commission, water stored in reservoirs covered by this subparagraph (b)(2) shall be earmarked for and charged to the State in which the water will be used.

(c) In the event the Commission finds that a reservoir site is available both to assure deliveries at Lee Ferry and to store water for consumptive use in a State of the Upper Division, the storage of water for consumptive use shall be given preference. Any reservoir or reservoir capacity hereafter used to assure deliveries at Lee Ferry shall by order of the Commission be used to store water for consumptive use in a State, provided the Commission finds that such storage

is reasonably necessary to permit such State to make use of the water apportioned to it by this Compact.

#### ARTICLE VI

The Commission shall determine the quantity of the consumptive use of water, which use is apportioned by Article III hereof, for the Upper Basin and for each State of the Upper Basin by the inflow-outflow method in terms of man-made depletions of the virgin flow at Lee Ferry, unless the Commission, by unanimous action, shall adopt a different method of determination.

#### ARTICLE VII

The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the State in which the use is made; provided, that such consumptive use incident to the diversion, impounding, or conveyance of water in one State for use in another shall be charged to such latter State.

#### ARTICLE VIII

(a) There is hereby created an interstate administrative agency to be known as the "Upper Colorado River Commission." The commission shall be composed of one Commissioner representing each of the States of the Upper Division, namely, the States of Colorado, New Mexico, Utah and Wyoming, designated or appointed in accordance with the laws of each such State and, if designated by the President, one Commissioner representing the United States of America. The President is hereby requested to designate a Commissioner. If so designated the Commissioner representing the United States of America shall be the presiding officer of the Commission and shall be entitled to the same powers and rights as the Commissioner of any State. Any four members of the Commission shall constitute a quorum.

(b) The salaries and personal expenses of each Commissioner shall be paid by the Government which he represents. All other expenses which are incurred by the Commission incident to the administration of this Compact, and which are not paid by the United States of America, shall be borne by the four States according to the percentage of consumptive use apportioned to each. On or before December 1 of each year, the Commission shall adopt and transmit to the Governors of the four States and to the President a budget covering an estimate of its expenses for the following year, and of the amount payable by each state. Each State shall pay the amount due by it to the Commission on or before April 1 of the year following. The payment of the expenses of the Commission and of its employees shall not be subject to the audit and accounting procedures of any of the four States; however, all receipts and disbursement of funds handled by the Commission shall be audited yearly by a qualified independent public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

(c) The Commission shall appoint a Secretary, who shall not be a member of the Commission, or an employee of any signatory State or of the United States of America while so acting. He shall serve for such term and receive such salary and perform such duties as the Commission may direct. The Commission may employ such engineering, legal, clerical and other personnel as, in its judgment, may be necessary for the performance of its functions under this Compact. In the hiring of employees, the Commission shall not be bound by the civil service laws of any State.

(d) The Commission, so far as consistent with this Compact, shall have the power to:

- (1) Adopt rules and regulations;
- (2) Locate, establish, construct, abandon, operate and maintain water gaging stations;
- (3) Make estimates to forecast water run-off on the Colorado River and any of its tributaries;
- (4) Engage in cooperative studies of water supplies of the Colorado River and its tributaries;



(5) Collect, analyze, correlate, preserve and report on data as to the stream flows, storage, diversions and use of the waters of the Colorado River, and any of its tributaries;

(6) Make findings as to the quantity of water of the Upper Colorado River System used each year in the Upper Colorado River Basin and in each State thereof;

(7) Make findings as to the quantity of water deliveries at Lee Ferry during each water year;

(8) Make findings as to the necessity for and the extent of the curtailment of use, required, if any, pursuant to Article IV hereof;

(9) Make findings as to the quantity of reservoir losses and as to the share thereof chargeable under Article V hereof to each of the States;

(10) Make findings of fact in the event of the occurrence of extraordinary drought or serious accident to the irrigation system in the Upper Basin, whereby deliveries by the Upper Basin of water which it may be required to deliver in order to aid in fulfilling obligations of the United States of America to the United Mexican States arising under the Treaty between the United States of America and the United Mexican States, dated February 3, 1944 (Treaty Series 994) become difficult, and report such findings to the Governors of the Upper Basin States, the President of the United States of America, the United States Section of the International Boundary and Water Commission, and such other Federal officials and agencies as it may deem appropriate to the end that the water allotted to Mexico under Division III of such treaty may be reduced in accordance with the terms of such treaty;

(11) Acquire and hold such personal and real property as may be necessary for the performance of its duties hereunder and to dispose of the same when no longer required;

(12) Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder either independently or in cooperation with any state or federal agency;

(13) Make and transmit annually to the Governors of the signatory States and the President of the United States of America, with the estimated budget, a report covering the activities of the Commission for the preceding water year.

(e) Except as otherwise provided in this Compact the concurrence of four members of the Commission shall be required in any action taken by it.

(f) The Commission and its Secretary shall make available to the Governor of each of the signatory States any information within its possession at any time, and shall always provide free access to its records by the Governors of each of the States, or their representatives, or authorized representatives of the United States of America.

(g) Findings of fact made by the Commission shall not be conclusive in any court, or before any agency or tribunal, but shall constitute prima facie evidence of the facts found.

(h) The organization meeting of the Commission shall be held within four months from the effective date of this Compact.

#### ARTICLE IX

(a) No State shall deny the right of the United States of America and, subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person, or entity of any signatory State to acquire rights to the use of water or to construct or participate in the construction and use of diversion works and storage reservoirs with appurtenant works canals and conduits in one State for the purpose of diverting, conveying, storing, regulating and releasing water to satisfy the provisions of the Colorado River Compact relating to the obligation of the States of the Upper Division to make deliveries of water at Lee Ferry or for the purpose of diverting, conveying, storing, or regulating water in an upper signatory State for consumptive use in a lower signatory State, when such use is within the apportionment to such lower State made by this Compact. Such rights shall be subject to the rights of water users in a

State in which such reservoirs or works are located, to receive and use water, the use of which is within the apportionment to such State by this Compact.

(b) Any signatory State, any person or any entity of any signatory State shall have the right to acquire such property rights as are necessary to the use of water in conformity with this Compact in any other signatory State by donation, purchase or through the exercise of the power of eminent domain. Any signatory State, upon the written request of the Governor of any other signatory State, for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price satisfactory to the requesting States, or, if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or such entity as may be designated by the requesting State; provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining the requested property shall be paid by the requesting State at the time and in the manner prescribed by the State requested to acquire the property.

(c) Should any facility be constructed in a signatory State by and for the benefit of other signatory State or States or the water users thereof, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located except that, in the case of a reservoir constructed in one State for the benefit of another State or States, the water administration officials of the State in which the facility is located shall permit the storage and release of any water which, as determined by findings of the Commission, falls within the apportionment of the State or States for whose benefit the facility is constructed. In the case of a regulating reservoir for the joint benefit of all States in making Lee Ferry deliveries, the water administration officials of the State in which the facility is located, in permitting the storage and release of water, shall comply with the findings and orders of the Commission.

(d) In the event property is acquired by a signatory State in another signatory State for the use and benefit of the former, the users of water made available by such facilities, as a condition precedent to the use hereof, shall pay to the political subdivisions of the State in which such works are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average annual amount of taxes levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivisions of the State, and in lieu of any and all taxes on said property, improvements and rights. The signatory States recommend to the President and the Congress that, in the event the United States of America shall acquire property in one of the signatory States for the benefit of another signatory State, or its water users, provision be made for like payment in reimbursement of loss of taxes.

#### ARTICLE X

(a) The signatory States recognize La Plata River Compact entered into between the States of Colorado and New Mexico, dated November 27, 1922, approved by the Congress on January 29, 1925 (43 Stat. 796), and this Compact shall not affect the apportionment therein made.

(b) All consumptive use of water of La Plata River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

#### ARTICLE XI

Subject to the provisions of this Compact, the consumptive use of the water of the Little Snake River and its tributaries is hereby apportioned between the States of Colorado and

Wyoming in such quantities as shall result from the application of the following principles and procedures:

(a) Water used under rights existing prior to the signing of this Compact.

(1) Water diverted from any tributary of the Little Snake River or from the main stem of the Little Snake River above a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered without regard to rights covering the diversion of water from any down-stream points.

(2) Water diverted from the main stem of the Little Snake River below a point one hundred feet below the confluence of Savery Creek and the Little Snake River shall be administered on the basis of an interstate priority schedule prepared by the Commission in conformity with priority dates established by the laws of the respective states.

(b) Water used under rights initiated subsequent to the signing of this Compact.

(1) Direct flow diversions shall be administered so that, in time of shortage the curtailment of use on each acre of land irrigated thereunder shall be as nearly equal as may be possible in both of the States.

(2) The storage of water by projects located in either State, whether of supplemental supply or of water used to irrigate land not irrigated at the date of the signing of this Compact, shall be so administered that in times of water shortage the curtailment of storage of water available for each acre of land irrigated thereunder shall be as nearly equal as may be possible in both States.

(c) Water uses under the apportionment made by this Article shall be in accordance with the principle that beneficial use shall be the basis, measure and limit of the right to use.

(d) The States of Colorado and Wyoming each assent to diversions and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact.

(e) In the event of the importation of water to the Little Snake River Basin from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement, made by the representatives of the States of Colorado and Wyoming on the Commission, it is otherwise provided.

(f) Water use projects initiated after the signing of this Compact, to the greatest extent possible, shall permit the full use within the Basin in the most feasible manner of the waters of the Little Snake River and its tributaries, without regard to the state line; and, so far as is practicable, shall result in an equal division between the States of the use of water not used under rights existing prior to the signing of this Compact.

(g) All consumptive use of the waters of the Little Snake River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

#### ARTICLE XII

Subject to the provisions of this Compact, the consumptive use of the waters of Henry's Fork, a tributary of Green River originating in the State of Utah and flowing into the State of Wyoming and thence into the Green River in the State of Utah; Beaver Creek, originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; Burnt Fork, a tributary of Henry's Fork originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; Birch Creek, a tributary of Henry's Fork originating in the State of Utah and flowing into Henry's Fork in the State of Wyoming; and Sheep Creek, a tributary of Green River in the State of Utah, and their tributaries, are hereby apportioned between the States of Utah and Wyoming in such quantities as will result from the application of the following principles and procedures:

(a) Waters used under rights existing prior to the signing of this Compact.

Waters diverted from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, shall be administered without regard to the state line on the basis of an interstate priority schedule to be prepared by the States affected and approved by the Commission in conformity with the actual priority of right of use, the water requirements of the land irrigated and the acreage irrigated in connection therewith.

(b) Waters used under rights from Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek and their tributaries, initiated after the signing of this Compact shall be divided fifty per cent to the State of Wyoming and fifty per cent to the State of Utah and each State may use said waters as and where it deems advisable.

(c) The State of Wyoming assents to the exclusive use by the State of Utah of the water of Sheep Creek, except that the lands, if any, presently irrigated in the State of Wyoming from the water of Sheep Creek shall be supplied with water from Sheep Creek in order of priority and in such quantities as are in conformity with the laws of the State of Utah.

(d) In the event of the importation of water to Henry's Fork, or any of its tributaries, from any other river basin, the State making the importation shall have the exclusive use of such imported water unless by written agreement made by the representatives of the States of Utah and Wyoming on the Commission, it is otherwise provided.

(e) All consumptive use of waters of Henry's Fork, Beaver Creek, Burnt Fork, Birch Creek, Sheep Creek, and their tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

(f) The States of Utah and Wyoming each assent to the diversion and storage of water in one State for use in the other State, subject to compliance with Article IX of this Compact. It shall be the duty of the water administrative officials of the State where the water is stored to release said stored water to the other State upon demand. If either the State of Utah or the State of Wyoming shall construct a reservoir in the other State for use in its own State, the water users of the State in which said facilities are constructed may purchase at cost a portion of the capacity of said reservoir sufficient for the irrigation of their lands thereunder.

(g) In order to measure the flow of water diverted, each State shall cause suitable measuring devices to be constructed, maintained and operated at or near the point of diversion into each ditch.

(h) The State Engineers of the two States jointly shall appoint a Special Water Commissioner who shall have authority to administer the water in both States in accordance with the terms of this Article. The salary and expenses of such Special Water Commissioner shall be paid, thirty per cent by the State of Utah and seventy per cent by the State of Wyoming.

#### ARTICLE XIII

Subject to the provisions of this Compact, the rights to the consumptive use of the water of the Yampa River, a tributary entering the Green River in the State of Colorado, are hereby apportioned between the States of Colorado and Utah in accordance with the following principles:

(a) The State of Colorado will not cause the flow of the Yampa River at the Maybell Gaging Station to be depleted below an aggregate of 5,000,000 acre-feet for any period of ten consecutive years reckoned in continuing progressive series beginning with the first day of October next succeeding the ratification and approval of this Compact. In the event any diversion is made from the Yampa River or from tributaries entering the Yampa River above the Maybell Gaging Station for the benefit of any water use project in the State of Utah, then the gross amount of all such diversions for use in the State of Utah, less any returns from such diversions to the River above

Maybell, shall be added to the actual flow at the Maybell Gaging Station to determine the total flow at the Maybell Gaging Station.

(b) All consumptive use of the waters of the Yampa River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

#### ARTICLE XIV

Subject to the provisions of this Compact, the consumptive use of the waters of the San Juan River and its tributaries is hereby apportioned between the States of Colorado and New Mexico as follows:

The state of Colorado agrees to deliver to the State of New Mexico from the San Juan River and its tributaries which rise in the State of Colorado a quantity of water which shall be sufficient, together with water originating in the San Juan Basin in the State of New Mexico, to enable the State of New Mexico to make full use of the water apportioned to the State of New Mexico by Article III of this Compact, subject, however, to the following:

(a) A first and prior right shall be recognized as to:

(1) All uses of water made in either State at the time of the signing of this Compact; and

(2) All uses of water contemplated by projects authorized at the time of signing of this Compact, under the laws of the United States of America whether or not such projects are eventually constructed by the United States of America or by some other entity.

(b) The State of Colorado assents to diversions and storage of water in the State of Colorado for use in the State of New Mexico, subject to compliance with Article IX of this Compact.

(c) The uses of the waters of the San Juan River and any of its tributaries within either State which are dependent upon a common source of water and which are not covered by (a) hereof, shall in times of water shortages be reduced in such quantity that the resulting consumptive use in each State will bear the same proportionate relation to the consumptive use made in each State during times of average water supply as determined by the Commission; provided, that any preferential uses of water to which Indians are entitled under Article XIX shall be excluded in determining the amount of curtailment to be made under this paragraph.

(d) The curtailment of water use by either State in order to make deliveries at Lee Ferry as required by Article IV of this Compact shall be independent of any and all conditions imposed by this Article and shall be made by each State, as and when required, without regard to any provision of this Article.

(e) All consumptive use of the waters of the San Juan River and its tributaries shall be charged under the apportionment of Article III hereof to the State in which the use is made; provided, that consumptive use incident to the diversion, impounding or conveyance of water in one State for use in the other shall be charged to the latter State.

#### ARTICLE XV

(a) Subject to the provisions of the Colorado River Compact and of this Compact water of the Upper Colorado River System may be impounded and used for the generation of electrical power, but such impounding and use shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent use for such dominant purposes.

(b) The provisions of this Compact shall not apply to or interfere with the right or power of any signatory State to regulate within its boundaries the appropriation, use and control of water, the consumptive use of which is apportioned and available to such State by this Compact.

#### ARTICLE XVI

The failure of any State to use the water, or any part thereof, the use of which is apportioned to it under the terms of this Compact, shall not constitute a relinquishment of the right to such use to the Lower Basin or to any other State, nor shall it constitute a forfeiture or abandonment of the right to such use.

#### ARTICLE XVII

The use of any water now or hereafter imported into the natural drainage basin of the Upper Colorado River System shall not be charged to any State under the apportionment of consumptive use made by this Compact.

#### ARTICLE XVIII

(a) The State of Arizona reserves its rights and interests under the Colorado River Compact as a State of the Lower Division and as a State of the Lower Basin.

(b) The State of New Mexico and the State of Utah reserve their respective rights and interests under the Colorado River Compact as States of the Lower Basin.

#### ARTICLE XIX

Nothing in this Compact shall be construed as:

(a) Affecting the obligations of the United States of America to Indian tribes;

(b) Affecting the obligations of the United States of America under the Treaty with the United Mexican States (Treaty Series 994);

(c) Affecting any rights or powers of the United States of America, its agencies or instrumentalities, in or to the waters of the Upper Colorado River System, or its capacity to acquire rights in and to the use of said waters;

(d) Subjecting any property of the United States of America, its agencies or instrumentalities, to taxation by any State or subdivision thereof, or creating any obligation on the part of the United States of America, its agencies or instrumentalities, by reason of the acquisition, construction or operation of any property or works of whatever kind, to make any payment to any State or political subdivision thereof, State agency, municipality or entity whatsoever, in reimbursement for the loss of taxes;

(e) Subjecting any property of the United States of America, its agencies or instrumentalities, to the laws of any State to an extent other than the extent to which such laws would apply without regard to this Compact.

#### ARTICLE XX

This Compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination, all rights established under it shall continue unimpaired.

#### ARTICLE XXI

This Compact shall become binding and obligatory when it shall have been ratified by the legislatures of each of the signatory States and approved by the Congress of the United States of America. Notice of ratification by the legislatures of the signatory States shall be given by the Governor of each signatory State to the Governor of each of the other signatory States and to the President of the United States of America, and the President is hereby requested to give notice to the Governor of each of the signatory States of approval by the Congress of the United States of America.

IN WITNESS WHEREOF, the Commissioners have executed six counterparts hereof each of which shall be and constitute an original, one of which shall be deposited in the archives of the Department of State of the United States of America, and one of which shall be forwarded to the Governor of each of the signatory States.

Done at the City of Santa Fe, State of New Mexico, this 11th day of October, 1948.

(Signed) Charles A. Carson

Commissioner for the State of Arizona

(Signed) Clifford H. Stone  
Commissioner for the State of Colorado  
(Signed) Fred E. Wilson  
Commissioner for the State of New Mexico  
(Signed) Edward H. Watson  
Commissioner for the State of Utah  
(Signed) L. C. Bishop  
Commissioner for the State of Wyoming  
(Signed) Grover A. Giles, Secretary

Approved:

(Signed) Harry W. Bashore  
Representative of the United States of America

No Change Since 1953

**73-13-11 Original compact -- Act as ratifying.**

The Compact ratified by this act is the original signed by the commissioners representing the states of Arizona, Colorado, New Mexico, Utah, and Wyoming, and the secretary of the commission, and approved by the representative of the United States of America, and deposited in the archives of the Department of State of the United States of America, and with the Division of Archives of the state of Utah.

Amended by Chapter 67, 1984 General Session

**73-13-12 Errors in copying for Section 73-13-10 -- As invalidating ratification.**

Any error made, if any, in copying the original Compact in Section 73-13-10 hereof, shall be held not to invalidate the ratification of the Compact in any way.

No Change Since 1953

## **Chapter 15**

### **Modification of Weather**

**73-15-3 Cloud seeding to increase precipitation -- Control of Division of Water Resources -- Powers and authority of division -- "Cloud seeding" and "cloud-seeding project" defined.**

The state of Utah through the Division of Water Resources shall be the only entity, private or public, that shall have authority to authorize cloud-seeding research, evaluation, or implementation projects to alter precipitation, cloud forms, or meteorological parameters within the state of Utah, except cloud seeding for the suppression of fog; and frost prevention measures for the protection of orchards and crops are excluded from the coverage of this act. The Division of Water Resources shall authorize and may sponsor or develop local or state-wide cloud-seeding projects that conform to over-all state water planning objectives and are determined to be feasible by the Division of Water Resources. The Division of Water Resources may contract with the Utah water research laboratory or any other individual or organization for consultation and/or assistance in developing cloud-seeding projects or in furthering necessary research of cloud seeding or other factors that may be affected by cloud-seeding activities. Cloud seeding as used in this act shall be construed to

mean all acts undertaken to artificially distribute or create nuclei in cloud masses for the purposes of altering precipitation, cloud forms, or other meteorological parameters. A cloud-seeding project as used in this act shall be a planned project to evaluate meteorological conditions, perform cloud seeding, and evaluate results.

Amended by Chapter 250, 1979 General Session

**73-15-4 Water from cloud seeding part of natural water supply -- Notice of intent prior to cloud-seeding project.**

All water derived as a result of cloud seeding shall be considered a part of the natural water supply of the basin in the same sense as if no cloud seeding operations had been conducted, and any water so derived shall not be subject to new appropriations but shall be administered and distributed to users on the stream system in accordance with existing water rights. A notice of intent shall be filed with the Division of Water Rights prior to the commencement of a cloud-seeding project.

Amended by Chapter 260, 1979 General Session

**73-15-5 Transfer of records and data to division -- Establishment of reporting and recordkeeping procedures.**

All records and data collected by the department of meteorology of the state school of mines and mineral industries of the University of Utah since March 14, 1953, shall be transferred to the Division of Water Resources, there to be a permanent record. The Division of Water Resources shall establish forms and/or criteria for reporting data and record keeping and cause that a permanent record is kept of all pertinent data related to cloud-seeding projects, cloud-seeding research projects, or research related to other factors that may be affected by cloud-seeding activities.

Amended by Chapter 21, 1999 General Session

**73-15-6 Cloud-seeding contractors -- Registration.**

Any individual or organization that would like to become a cloud-seeding contractor in the state of Utah shall register with the Division of Water Resources. As a part of the registration the applicant shall meet qualifications established by the Division of Water Resources and submit proof of financial responsibility in order to give reasonable assurance of protection to the public in the event it should be established that damages were caused to third parties as a result of negligence in carrying out a cloud-seeding project.

Enacted by Chapter 193, 1973 General Session

**73-15-7 Precipitation caused by authorized project not presumed to constitute trespass or nuisance.**

The mere dissemination of materials and substances into the atmosphere or causing precipitation pursuant to an authorized cloud-seeding project shall not give rise to any presumption that such use of the atmosphere or lands constitutes trespass or involves an actionable or enjoined public or private nuisance.

Enacted by Chapter 193, 1973 General Session



**73-15-8 Cloud seeding in Utah to target area in adjoining state.**

Cloud seeding in Utah to target an area in an adjoining state is prohibited except upon full compliance of the laws of the target area state the same as if the cloud-seeding operation took place in the target area state, as well as the other provisions of this act.

Enacted by Chapter 193, 1973 General Session

**Chapter 16**  
**Amended Bear River Compact**

**73-16-1 Ratification.**

The Bear River Compact entered into at Salt Lake City, Utah, on February 4, 1955, by Idaho, Utah and Wyoming, by the representatives of those states, with the approval of the representative of the United States of America, is hereby unconditionally ratified, approved and confirmed for and by the state of Utah.

Enacted by Chapter 161, 1955 General Session

**73-16-2 Text of compact.**

The text of the Bear River Compact is as follows:

**AMENDED BEAR RIVER COMPACT**

The State of Idaho, the State of Utah and the State of Wyoming, acting through their respective Commissioners after negotiations participated in by a representative of the United States of America appointed by the President, have agreed to an Amended Bear River Compact as follows:

**ARTICLE I**

A. The major purposes of this Compact are to remove the causes of present and future controversy over the distribution and use of the waters of the Bear River; to provide for efficient use of water for multiple purposes; to permit additional development of the water resources of Bear River; to promote interstate comity; and to accomplish an equitable apportionment of the waters of the Bear River among the compacting States.

B. The physical and all other conditions peculiar to the Bear River constitute the basis for this Compact. No general principle or precedent with respect to any other interstate stream is intended to be established.

**ARTICLE II**

As used in this Compact the term

1. "Bear River" means the Bear River and its tributaries from its source in the Uinta Mountains to its mouth in Great Salt Lake;
2. "Bear Lake" means Bear Lake and Mud Lake;
3. "Upper Division" means the portion of Bear River from its source in the Uinta Mountains to and including Pixley Dam, a diversion dam in the Southeast Quarter of Section 25, Township 23 North, Range 120 West, Sixth Principal Meridian, Wyoming;
4. "Central Division" means the portion of Bear River from Pixley Dam to and including Stewart Dam, a diversion dam in Section 34, Township 13 South, Range 44 East, Boise Base and Meridian, Idaho;

5. "Lower Division" means the portion of the Bear River between Stewart Dam and Great Salt Lake, including Bear Lake and its tributary drainage;

6. "Upper Utah Section Diversions" means the sum of all diversions in second-feet from the Bear River and the tributaries of the Bear River joining the Bear River upstream from the point where the Bear River crosses the Utah-Wyoming State line above Evanston, Wyoming; excluding the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;

7. "Upper Wyoming Section Diversions" means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming State line above Evanston, Wyoming, to the point where the Bear River crosses the Wyoming-Utah State line east of Woodruff, Utah, and including the diversions by the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal;

8. "Lower Utah Section Diversions" means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Wyoming-Utah State line east of Woodruff, Utah, to the point where the Bear River crosses the Utah-Wyoming State line northeast of Randolph, Utah;

9. "Lower Wyoming Section Diversions" means the sum of all diversions in second-feet from the Bear River main stem from the point where the Bear River crosses the Utah-Wyoming State line northeast of Randolph to and including the diversion at Pixley Dam;

10. "Commission" means the Bear River Commission, organized pursuant to Article III of this Compact;

11. "Water user" means a person, corporation, or other entity having a right to divert water from the Bear River for beneficial use;

12. "Second-foot" means a flow of one cubic foot of water per second of time passing a given point;

13. "Acre-foot" means the quantity of water required to cover one acre to a depth of one foot, equivalent to 43,560 cubic feet;

14. "Biennium" means the 2-year period commencing on October 1 of the first odd-numbered year after the effective date of this Compact and each 2-year period thereafter;

15. "Water year" means the period beginning October 1 and ending September 30 of the following year;

16. "Direct flow" means all water flowing in a natural watercourse except water released from storage or imported from a source other than the Bear River watershed;

17. "Border Gaging Station" means the stream flow gaging station in Idaho on the Bear River above Thomas Fork near the Wyoming-Idaho boundary line in the Northeast Quarter of the Northeast Quarter of Section 15, Township 14 South, Range 46 East, Boise Base and Meridian, Idaho;

18. "Smiths Fork" means a Bear River tributary which rises in Lincoln County, Wyoming, and flows in a general southwesterly direction to its confluence with Bear River near Cokeville, Wyoming;

19. "Grade Creek" means a Smiths Fork tributary which rises in Lincoln County, Wyoming, and flows in a westerly direction and in its natural channel is tributary to Smiths Fork in Section 17, Township 25 North, Range 118 West, Sixth Principal Meridian, Wyoming;

20. "Pine Creek" means a Smiths Fork tributary which rises in Lincoln County, Wyoming, emerging from its mountain canyon in Section 34, Township 25 North, Range 118 West, Sixth Principal Meridian, Wyoming, and its natural channel is tributary to Smiths Fork in Section 36, Township 25 North, Range 119 West, Sixth Principal Meridian, Wyoming;

21. "Bruner Creek" and "Pine Creek Springs" means Smiths Fork tributaries which rise in Lincoln County, Wyoming, in Sections 31 and 32, Township 25 North, Range 118 West, Sixth Principal Meridian, and in their natural channels are tributary to Smiths Fork in Section 36, Township 25 North, Range 119 West, Sixth Principal Meridian, Wyoming;

22. "Spring Creek" means a Smiths Fork tributary which rises in Lincoln County, Wyoming, in Sections 1 and 2, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming, and flows in a general westerly direction to its confluence with Smiths Fork in Section 4, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming;

23. "Sublette Creek" means the Bear River tributary which rises in Lincoln County, Wyoming, and flows in a general westerly direction to its confluence with Bear River in Section 20, Township 24 North, Range 119 West, Sixth Principal Meridian, Wyoming;

24. "Hobble Creek" means the Smiths Fork tributary which rises in Lincoln County, Wyoming, and flows in a general southwesterly direction to its confluence with Smiths Fork in Section 35, Township 28 North, Range 118 West, Sixth Principal Meridian, Wyoming;

25. "Hilliard East Fork Canal" means that irrigation canal which diverts water from the right bank of the East Fork of Bear River in Summit County, Utah, at a point West 1,310 feet and North 330 feet from the Southeast corner of Section 16, Township 2 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the Southwest Quarter of Section 21, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

26. "Lannon Canal" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, East 1,480 feet from the West Quarter corner of Section 19, Township 3 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

27. "Lone Mountain Ditch" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, North 1,535 feet and East 1,120 feet from the West Quarter corner of Section 19, Township 3 North, Range 10 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah-Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

28. "Hilliard West Side Canal" means that irrigation canal which diverts water from the right bank of the Bear River in Summit County, Utah, at a point North 2,190 feet and East 1,450 feet from the South Quarter corner of Section 13, Township 3 North, Range 9 East, Salt Lake Base and Meridian, Utah, and runs in a northerly direction crossing the Utah Wyoming State line into the South Half of Section 20, Township 12 North, Range 119 West, Sixth Principal Meridian, Wyoming;

29. "Francis Lee Canal" means that irrigation canal which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the Northeast Quarter of Section 30, Township 18 North, Range 120 West, Sixth Principal Meridian, Wyoming, and runs in a westerly direction across the Wyoming-Utah State line into Section 16, Township 9 North, Range 8 East, Salt Lake Base and Meridian, Utah;

30. "Chapman Canal" means that irrigation canal which diverts water from the left bank of the Bear River in Uinta County, Wyoming, in the Northeast Quarter of Section 36, Township 16 North, Range 121 West, Sixth Principal Meridian, Wyoming, and runs in a northerly direction crossing over the low divide into the Saleratus drainage basin near the Southeast corner of Section 36, Township 17 North, Range 121 West, Sixth Principal Meridian, Wyoming, and then in a general westerly direction crossing the Wyoming-Utah State line;

31. "Neponset Reservoir" means that reservoir located principally in Sections 34 and 35, Township 8 North, Range 7 East, Salt Lake Base and Meridian, Utah, having a capacity of 6,900 acre-feet.

### ARTICLE III

A. There is hereby created an interstate administrative agency to be known as the "Bear River Commission" which is hereby constituted a legal entity and in such name shall exercise the powers hereinafter specified. The Commission shall be composed of nine Commissioners, three Commissioners representing each signatory State, and if appointed by the President, one additional Commissioner representing the United States of America who shall serve as chairman, without vote. Each Commissioner, except the chairman, shall have one vote. The State Commissioners shall be selected in accordance with State law. Six Commissioners who shall include two Commissioners from each State shall constitute a quorum. The vote of at least two-thirds of the Commissioners when a quorum is present shall be necessary for the action of the Commission.

B. The compensation and expenses of each Commissioner and each adviser shall be paid by the government which he represents. All expenses incurred by the Commission in the administration of this Compact, except those paid by the United States of America, shall be paid by the signatory States on an equal basis.

C. The Commission shall have power to:

1. Adopt bylaws, rules, and regulations not inconsistent with this Compact;
2. Acquire, hold, convey or otherwise dispose of property;
3. Employ such persons and contract for such services as may be necessary to carry out its duties under this Compact;
4. Sue and be sued as a legal entity in any court of record of a signatory State, and in any court of the United States having jurisdiction of such action;
5. Co-operate with State and Federal agencies in matters relating to water pollution of interstate significance;
6. Perform all functions required of it by this Compact and do all things necessary, proper or convenient in the performance of its duties hereunder, independently or in cooperation with others, including State and Federal agencies.

D. The Commission shall:

1. Enforce this Compact and its orders made hereunder by suit or other appropriate action;
2. Compile a report covering the work of the Commission and expenditures during the current biennium, and an estimate of expenditures for the following biennium and transmit it to the President of the United States and to the Governors of the signatory States on or before July 1 following each biennium.

### ARTICLE IV

Rights to direct flow water shall be administered in each signatory State under state law, with the following limitations:

A. When there is a water emergency, as hereinafter defined for each division, water shall be distributed therein as provided below.

1. Upper Division.

a. When the divertible flow as defined below for the upper division is less than 1,250 second-feet, a water emergency shall be deemed to exist therein and such divertible flow is allocated for diversion in the river sections of the Division as follows:

Upper Utah Section Diversions - 0.6%,

Upper Wyoming Section Diversions - 49.3%,

Lower Utah Section Diversions - 40.5%,

Lower Wyoming Section Diversions - 9.6%.

Such divertible flow shall be the total of the following five items:

- (1) Upper Utah Section Diversions in second-feet,
- (2) Upper Wyoming Section Diversions in second-feet,
- (3) Lower Utah Section Diversions in second-feet,
- (4) Lower Wyoming Section Diversions in second-feet,
- (5) The flow in second-feet passing Pixley Dam.

b. The Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal, which divert water in Utah to irrigate lands in Wyoming, shall be supplied from the divertible flow allocated to the Upper Wyoming Section Diversions.

c. The Chapman, Bear River, and Francis Lee Canals, which divert water from the main stem of Bear River in Wyoming to irrigate lands in both Wyoming and Utah, shall be supplied from the divertible flow allocated to the Upper Wyoming Section Diversions.

d. The Beckwith Quinn West Side Canal, which diverts water from the main stem of Bear River in Utah to irrigate lands in both Utah and Wyoming, shall be supplied from the divertible flow allocated to the Lower Utah Section Diversions.

e. If for any reason the aggregate of all diversions in a river section of the Upper Division does not equal the allocation of water thereto, the unused portion of such allocation shall be available for use in the other river sections in the Upper Division in the following order: (1) In the other river section of the same State in which the unused allocation occurs; and (2) In the river sections of the other State. No permanent right of use shall be established by the distribution of water pursuant to this paragraph e.

f. Water allocated to the several sections shall be distributed in each section in accordance with State law.

2. Central Division.

a. When either the divertible flow as hereinafter defined for the Central Division is less than 870 second-feet, or the flow of the Bear River at Border Gaging Station is less than 350 second-feet, whichever shall first occur, a water emergency shall be deemed to exist in the Central Division and the total of all diversions in Wyoming from Grade Creek, Pine Creek, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, Smiths Fork, and all the tributaries of Smiths Fork above the mouth of Hobble Creek including Hobble Creek, and from the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho State line near Border shall be limited for the benefit of the State of Idaho, to not exceed 43% of the divertible flow. The remaining 57% of the divertible flow shall be available for use in Idaho in the Central Division, but if any portion of such allocation is not used therein it shall be available for use in Idaho in the Lower Division.

The divertible flow for the Central Division shall be the total of the following three items:

(1) Diversions in second-feet in Wyoming consisting of the sum of all diversions from Grade Creek, Pine Creek, Bruner Creek and Pine Creek Springs, Spring Creek, Sublette Creek, and Smiths Fork and all the tributaries of Smiths Fork above the mouth of Hobble Creek including Hobble Creek, and the main stem of the Bear River between Pixley Dam and the point where the river crosses the Wyoming-Idaho State line near Border, Wyoming.

(2) Diversions in second-feet in Idaho from the Bear River main stem from the point where the river crosses the Wyoming-Idaho State line near Border to Stewart Dam including West Fork Canal which diverts at Stewart Dam.

(3) Flow in second-feet of the Rainbow Inlet Canal and of the Bear River passing downstream from Stewart Dam.

b. The Cook Canal, which diverts water from the main stem of the Bear River in Wyoming to irrigate lands in both Wyoming and Idaho, shall be considered a Wyoming diversion and shall be supplied from the divertible flow allocated to Wyoming.

c. Water allocated to each State shall be distributed in accordance with State law.

3. Lower Division.

a. When the flow of water across the Idaho-Utah boundary line is insufficient to satisfy water rights in Utah, covering water applied to beneficial use prior to January 1, 1976, any water user in Utah may file a petition with the Commission alleging that by reason of diversions in Idaho he is being deprived of water to which he is justly entitled, and that by reason thereof, a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds a water emergency exists, it shall put into effect water delivery schedules based on priority of rights and prepared by the Commission without regard to the boundary line for all or any part of the Division, and during such emergency, water shall be delivered in accordance with such schedules by the State official charged with the administration of public waters.

B. The Commission shall have authority upon its own motion (1) to declare a water emergency in any or all river divisions based upon its determination that there are diversions which violate this Compact and which encroach upon water rights in a lower State, (2) to make appropriate orders to prevent such encroachments, and (3) to enforce such orders by action before State administrative officials or by court proceedings.

C. When the flow of water in an interstate tributary across a State boundary line is insufficient to satisfy water rights on such tributary in a lower State, any water user may file a petition with the Commission alleging that by reason of diversions in an upstream State he is being deprived of water to which he is justly entitled and that by reason thereof a water emergency exists, and requesting distribution of water under the direction of the Commission. If the Commission finds that a water emergency exists and that interstate control of water of such tributary is necessary, it shall put into effect water delivery schedules based on priority of rights and prepared without regard to the State boundary line. The State officials in charge of water distribution on interstate tributaries may appoint and fix the compensation and expenses of a joint water commissioner for each tributary. The proportion of the compensation and expenses to be paid by each State shall be determined by the ratio between the number of acres therein which are irrigated by diversions from such tributary, and the total number of acres irrigated from such tributary.

D. In preparing interstate water delivery schedules the Commission, upon notice and after public hearings, shall make finding of fact as to the nature, priority and extent of water rights, rates of flow, duty of water, irrigated acreages, types of crops, time of use, and related matters; provided that such schedules shall recognize and incorporate therein priority of water rights as adjudicated in each of the signatory States. Such findings of fact shall, in any court or before any tribunal, constitute prima facie evidence of the facts found.

E. Water emergencies provided for herein shall terminate on September 30 of each year unless terminated sooner or extended by the Commission.

ARTICLE V

A. Water rights in the Lower Division acquired under the laws of Idaho and Utah covering water applied to beneficial use prior to January 1, 1976, are hereby recognized and shall be administered in accordance with State law based on priority of rights as provided in Article IV, paragraph A3. Rights to water first applied to beneficial use on or after January 1, 1976, shall be satisfied from the respective allocations made to Idaho and Utah in this paragraph and the water allocated to each State shall be administered in accordance with State law. Subject to the

foregoing provisions, the remaining water in the Lower Division, including ground water tributary to the Bear River, is hereby apportioned for use in Idaho and Utah as follows:

- (1) Idaho shall have the first right to the use of such remaining water resulting in an annual depletion of not more than 125,000 acre-feet.
- (2) Utah shall have the second right to the use of such remaining water resulting in an annual depletion of not more than 275,000 acre-feet.
- (3) Idaho and Utah shall each have an additional right to deplete annually on an equal basis, 75,000 acre-feet of the remaining water after the rights provided by subparagraphs (1), and (2) above have been satisfied.
- (4) Any remaining water in the Lower Division after the allocations provided for in subparagraphs (1), (2), and (3) above have been satisfied shall be divided; 30% to Idaho and 70% to Utah.

B. Water allocated under the above subparagraphs shall be charged against the State in which it is used regardless of the location of the point of diversion.

C. Water depletions permitted under provisions of subparagraphs (1), (2), and (3), and (4) above, shall be calculated and administered by a Commission-approved procedure.

ARTICLE VI

A. Existing storage rights in reservoirs constructed above Stewart Dam prior to February 4, 1955, are as follows:

Idaho	.....324 acre-feet
Utah	.....11,850 acre-feet
Wyoming	.....2,150 acre-feet

Additional rights are hereby granted to store in any water year above Stewart Dam, 35,500 acre-feet of Bear River water and no more under this paragraph for use in Utah and Wyoming; and to store in any water year in Idaho or Wyoming on Thomas Fork 1,000 acre-feet of water for use in Idaho. Such additional storage rights shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam. One-half of the 35,500 acre-feet of additional storage right above Stewart Dam so granted to Utah and Wyoming is hereby allocated to Utah, and the remaining one-half thereof is allocated to Wyoming.

B. In addition to the rights defined in Paragraph A of this Article, further storage entitlements above Stewart Dam are hereby granted. Wyoming and Utah are granted an additional right to store in any year 70,000 acre-feet of Bear River water for use in Utah and Wyoming to be divided equally; and Idaho is granted an additional right to store 4,500 acre-feet of Bear River water in Wyoming or Idaho for use in Idaho. Water rights granted under this paragraph and water appropriated, including ground water tributary to Bear River, which is applied to beneficial use on or after January 1, 1976, shall not result in an annual increase in depletion of the flow of the Bear River and its tributaries above Stewart Dam of more than 28,000 acre-feet in excess of the depletion as of January 1, 1976. Thirteen thousand (13,000) acre-feet of the additional depletion above Stewart Dam is allocated to each of Utah and Wyoming, and two thousand (2,000) acre-feet is allocated to Idaho.

The additional storage rights provided for in this Paragraph shall be subordinate to, and shall not be exercised when the effect thereof will be to impair or interfere with (1) existing direct flow rights for consumptive use in any river division and (2) existing storage rights above Stewart

Dam, but shall not be subordinate to any right to store water in Bear Lake or elsewhere below Stewart Dam; provided, however, there shall be no diversion of water to storage above Stewart Dam under this Paragraph B when the water surface elevation of Bear Lake is below 5,911.00 feet, Utah Power & Light Company datum (the equivalent of elevation 5,913.75 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947). Water depletions permitted under this Paragraph B shall be calculated and administered by a Commission-approved procedure.

C. In addition to the rights defined in Article VI, Paragraphs A and B, Idaho, Utah and Wyoming are granted the right to store and use water above Stewart Dam that otherwise would be bypassed or released from Bear Lake at times when all other direct flow and storage rights are satisfied. The availability of such water and the operation of reservoir space to store water above Bear Lake under this paragraph shall be determined by a Commission-approved procedure. The storage provided for in this Paragraph shall be subordinate to all other storage and direct flow rights in the Bear River. Storage rights under this Paragraph shall be exercised with equal priority on the following basis: 6% thereof to Idaho; 47% thereof to Utah; and 47% thereof to Wyoming.

D. The waters of Bear Lake below elevation 5,912.91 feet, Utah Power and Light Company Bear Lake datum (the equivalent of elevation 5,915.66 feet based on the sea level datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947) shall constitute a reserve for irrigation. The water of such reserve shall not be released solely for the generation of power, except in emergency, but after release for irrigation it may be used in generating power if not inconsistent with its use for irrigation. Any water in Bear Lake in excess of that constituting the irrigation reserve may be used for the generation of power or for other beneficial uses. As new reservoir capacity above the Stewart Dam is constructed to provide additional storage pursuant to Paragraph A of this Article, the Commission shall make a finding in writing as to the quantity of additional storage and shall thereupon make an order increasing the irrigation reserve in accordance with the following table:

Additional Storage Acre-feet	Lake surface elevation Utah Power & Light Company Bear Lake datum
5,000	5,913.24
10,000	5,913.56
15,000	5,913.87
20,000	5,914.15
25,000	5,914.41
30,000	5,914.61
35,500	5,914.69
36,500	5,914.70

E. Subject to existing rights, each State shall have the use of water, including groundwater, for ordinary domestic, and stock watering purposes, as determined by State law and shall have the right to impound water for such purposes in reservoirs having storage capacities not in excess, in any case, of 20 acre-feet, without deduction from the allocation made by paragraphs A, B, and C of this Article.



F. The storage rights in Bear Lake are hereby recognized and confirmed subject only to the restrictions hereinbefore recited.

#### ARTICLE VII

It is the policy of the signatory States to encourage additional projects for the development of the water resources of the Bear River to obtain the maximum beneficial use of water with a minimum of waste, and in furtherance of such policy, authority is granted within the limitations provided by this Compact, to investigate, plan, construct, and operate such projects without regard to State boundaries, provided that water rights for each such project shall, except as provided in Article VI, Paragraphs A and B, thereof, be subject to rights theretofore initiated and in good standing.

#### ARTICLE VIII

A. No State shall deny the right of the United States of America, and subject to the conditions hereinafter contained, no State shall deny the right of another signatory State, any person or entity of another signatory State, to acquire rights to the use of water or to construct or to participate in the construction and use of diversion works and storage reservoirs with appurtenant works, canals, and conduits in one State for use of water in another State, either directly or by exchange. Water rights acquired for out-of-state use shall be appropriated in the State where the point of diversion is located in the manner provided by law for appropriation of water for use within such State.

B. Any signatory State, any person or any entity of any signatory State, shall have the right to acquire in any other signatory State such property rights as are necessary to the use of water in conformity with this Compact by donation, purchase, or, as hereinafter provided through the exercise of the power of eminent domain in accordance with the law of the State in which such property is located. Any signatory State, upon the written request of the Governor of any other signatory State for the benefit of whose water users property is to be acquired in the State to which such written request is made, shall proceed expeditiously to acquire the desired property either by purchase at a price acceptable to the requesting Governor, or if such purchase cannot be made, then through the exercise of its power of eminent domain and shall convey such property to the requesting State or to the person, or entity designated by its Governor provided, that all costs of acquisition and expenses of every kind and nature whatsoever incurred in obtaining such property shall be paid by the requesting State or the person or entity designated by its Governor.

C. Should any facility be constructed in a signatory State by and for the benefit of another signatory State or persons or entities therein, as above provided, the construction, repair, replacement, maintenance and operation of such facility shall be subject to the laws of the State in which the facility is located.

D. In the event lands or other taxable facilities are acquired by a signatory State in another signatory State for the use and benefit of the former, the users of the water made available by such facilities, as a condition precedent to the use thereof, shall pay to the political subdivisions of the State in which such facilities are located, each and every year during which such rights are enjoyed for such purposes, a sum of money equivalent to the average of the amount of taxes annually levied and assessed against the land and improvements thereon during the ten years preceding the acquisition of such land. Said payments shall be in full reimbursement for the loss of taxes in such political subdivision of the State.

E. Rights to the use of water acquired under this Article shall in all respects be subject to this Compact.

#### ARTICLE IX

Stored water, or water from another watershed may be turned into the channel of the Bear River in one State and a like quantity, with allowance for loss by evaporation, transpiration, and

seepage, may be taken out of the Bear River in another State either above or below the point where the water is turned into the channel, but in making such exchange the replacement water shall not be inferior in quality for the purpose used or diminished in quantity. Exchanges shall not be permitted if the effect thereof is to impair vested rights or to cause damage for which no compensation is paid. Water from another watershed or source which enters the Bear River by actions within a State may be claimed exclusively by that State and use thereof by that State shall not be subject to the depletion limitations of Articles IV, V and VI. Proof of any claimed increase in flow shall be the burden of the State making such claim, and it shall be approved only by the unanimous vote of the Commission.

#### ARTICLE X

A. The following rights to the use of Bear River water carried in interstate canals are recognized and confirmed.

					Lands irrigated	
Name of Canal	Date of priority		Primary right second-feet		Acres	State
Hilliard East Fork	1914		28.00		2,644	Wyoming
Chapman	8-13-86		16.46		1,155	Wyoming
	8-13-86		98.46		6,892	Utah
	4-12-12		.57		40	Wyoming
	5-3-12		4.07		285	Utah
	5-21-12		10.17		712	Utah
	2-6-13		.79		55	Wyoming
	8-28-05		134.001			
Francis Lee	1879		2.20		154	Wyoming
	1879		7.41		519	Utah

1Under the right as herein confirmed not to exceed 134 second-feet may be carried across the Wyoming-Utah State line in the Chapman Canal at any time for filling the Neponset Reservoir, for irrigation of land in Utah and for other purposes. The storage right in Neponset Reservoir is for 6,900 acre-feet, which is a component part of the irrigation right for the Utah lands listed above.

All other rights to the use of water carried in interstate canals and ditches, as adjudicated in the State in which the point of diversion is located, are recognized and confirmed.

B. All interstate rights shall be administered by the State in which the point of diversion is located and during times of water emergency, such rights shall be filled from the allocations specified in Article IV hereof for the Section in which the point of diversion is located, with the exception that the diversion of water into the Hilliard East Fork Canal, Lannon Canal, Lone Mountain Ditch, and Hilliard West Side Canal shall be under the administration of Wyoming. During times of water emergency these canals and the Lone Mountain Ditch shall be supplied from the allocation specified in Article IV for the Upper Wyoming Section Diversions.

#### ARTICLE XI

Applications for appropriation, for change of point of diversion, place and nature of use, and for exchange of Bear River water shall be considered and acted upon in accordance with the law of the state in which the point of diversion is located, but no such application shall be approved if the effect thereof will be to deprive any water user in another state of water to which he is entitled,

nor shall any such application be approved if the effect thereof will be an increase in the depletion of the flow of the Bear River and its tributaries beyond the limits authorized in each State in Articles IV, V and VI of this Compact. The official of each State in charge of water administration shall, at intervals and in the format established by the Commission, report on the status of use of the respective allocations.

#### ARTICLE XII

Nothing in this Compact shall be construed to prevent the United States, a signatory State or political subdivision thereof, person, corporation, or association, from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under State or Federal law or under this Compact.

#### ARTICLE XIII

Nothing contained in this Compact shall be deemed

1. To affect the obligations of the United States of America to the Indian tribes;
2. To impair, extend or otherwise affect any right or power of the United States, its agencies or instrumentalities involved herein; nor the capacity of the United States to hold or acquire additional rights to the use of the water of the Bear River;
3. To subject any property or rights of the United States to the laws of the States which were not subject thereto prior to the date of this Compact;
4. To subject any property of the United States to taxation by the States or any subdivision thereof, nor to obligate the United States to pay any State or subdivision thereof for loss of taxes.

#### ARTICLE XIV

At intervals not exceeding twenty years, the Commission shall review the provisions hereof, and after notice and public hearing, may propose amendments to any such provision, provided, however, that the provisions contained herein shall remain in full force and effect until such proposed amendments have been ratified by the legislatures of the signatory States and consented to by Congress.

#### ARTICLE XV

This Compact may be terminated at any time by the unanimous agreement of the signatory States. In the event of such termination all rights established under it shall continue unimpaired.

#### ARTICLE XVI

Should a court of competent jurisdiction hold any part of this Compact to be contrary to the constitution of any signatory State or to the Constitution of the United States, all other severable provisions of this Compact shall continue in full force and effect.

#### ARTICLE XVII

This Compact shall be in effect when it shall have been ratified by the Legislature of each signatory State and consented to by the Congress of the United States of America. Notice of ratification by the legislatures of the signatory States shall be given by the Governor of each signatory State to the Governor of each of the other signatory States and to the President of the United States of America, and the President is hereby requested to give notice to the Governor of each of the signatory States of approval by the Congress of the United States of America.

IN WITNESS WHEREOF, The Commissioners and their advisers have executed this Compact in five originals, one of which shall be deposited with the General Services Administration of the United States of America, one of which shall be forwarded to the Governor of each of the signatory States, and one of which shall be made a part of the permanent records of the Bear River Commission.

Done at Salt Lake City, Utah, this 22nd day of December, 1978.

For the State of Idaho:

(s) Clifford J. Skinner                      (s) Don W. Gilbert

(s) J. Daniel Roberts

For the State of Utah:

(s) S. Paul Holmgren

(s) Daniel F. Lawrence

(s) Simeon Weston

For the State of Wyoming:

(s) George L. Christopoulos

(s) John A. Teichert

(s) J. W. Myers

Approved:

Attest:

Wallace N. Jibson

Daniel F. Lawrence

Representative of the

Secretary of the Bear River

United States of America

Commission

Amended by Chapter 254, 1979 General Session

### **73-16-3 Ratification of compact.**

The compact ratified by this act is the original signed by the commissioners representing the states of Idaho, Utah, and Wyoming, and the secretary of the commission, and approved by the representative of the United States of America, and deposited in the archives of the Department of State of the United States of America and with the Division of Archives of the state of Utah.

Amended by Chapter 67, 1984 General Session

### **73-16-4 Members of commission.**

- (1) There shall be three members of the Bear River Compact commission from the state of Utah.
- (2) One member shall be the interstate stream commissioner of Utah and he shall be chairman of the Utah delegation. The other two commissioners from Utah shall be appointed by the state water and power board with the consent of the governor, and they shall hold office at the pleasure of the water and power board and until their successors shall have been appointed and qualified.
- (3) Each member shall be a bona fide resident of the state of Utah and one shall be a landowner and irrigator actually residing on and operating a farm within the lower division as defined by the compact and one shall be a landowner and irrigator actually residing on and operating a farm within the upper division as defined by the compact.
- (4) The Utah water and power board may with the consent of the governor appoint two alternate members of the Bear River commission.
  - (a) One such alternate shall be a bona fide resident of the state of Utah and a landowner and irrigator actually residing on and operating a farm within the lower division as defined by the compact and he shall be entitled to act at all regular and special meetings of the Bear River commission whenever the regular member of the commission from this same area is unable to serve and act.
  - (b) One such alternate shall be a bona fide resident of the state of Utah and shall be a landowner and irrigator actually residing on and operating a farm within the upper division as defined by the compact and he shall be entitled to act at all regular and special meetings of the Bear River commission whenever the regular member of the commission from this same area is unable to serve and act.
- (5) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;

- (b) Section 63A-3-107; and
- (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

Amended by Chapter 286, 2010 General Session

**73-16-5 Error in copying does not invalidate.**

Any error made, if any, in copying the original compact in Section 73-16-2 hereof, shall be held not to invalidate the ratification of the compact in any way.

Enacted by Chapter 161, 1955 General Session

## **Chapter 18**

### **State Boating Act**

**73-18-1 Statement of policy.**

It is the policy of this state to regulate and promote safety for persons and property in and connected with the use, operation and equipment of vessels and to promote uniformity of laws and to adopt and pursue an educational program in relation thereto.

Amended by Chapter 188, 1971 General Session

**73-18-2 Definitions.**

As used in this chapter:

- (1) "Anchored" means a vessel that is temporarily attached to the bed or shoreline of a waterbody by any method and the hull of the vessel is not touching the bed or shoreline.
- (2) "Beached" means that a vessel's hull is resting on the bed or shoreline of a waterbody.
- (3) "Board" means the Board of Parks and Recreation.
- (4) "Boat livery" means a person that holds a vessel for renting or leasing.
- (5) "Carrying passengers for hire" means to transport persons on vessels or to lead persons on vessels for consideration.
- (6) "Consideration" means something of value given or done in exchange for something given or done by another.
- (7) "Dealer" means any person who is licensed by the appropriate authority to engage in and who is engaged in the business of buying and selling vessels or of manufacturing them for sale.
- (8) "Derelict vessel":
  - (a) means a vessel that is left, stored, or abandoned upon the waters of this state in a wrecked, junked, or substantially dismantled condition; and
  - (b) includes:
    - (i) a vessel left at a Utah port or marina without consent of the agency or other entity administering the port or marine area; and
    - (ii) a vessel left docked or grounded upon a property without the property owner's consent.
- (9) "Division" means the Division of Parks and Recreation.
- (10) "Moored" means long term, on the water vessel storage in an area designated and properly marked by the division or other applicable managing agency.
- (11) "Motorboat" means any vessel propelled by machinery, whether or not the machinery is the principal source of propulsion.

- (12) "Operate" means to navigate, control, or otherwise use a vessel.
- (13) "Operator" means the person who is in control of a vessel while it is in use.
- (14) "Outfitting company" means any person who, for consideration:
  - (a) provides equipment to transport persons on all waters of this state; and
  - (b) supervises a person who:
    - (i) operates a vessel to transport passengers; or
    - (ii) leads a person on a vessel.
- (15)
  - (a) "Owner" means a person, other than a lien holder, holding a proprietary interest in or the title to a vessel.
  - (b) "Owner" includes a person entitled to the use or possession of a vessel subject to an interest by another person, reserved or created by agreement and securing payment or performance of an obligation.
  - (c) "Owner" does not include a lessee under a lease not intended as security.
- (16) "Personal watercraft" means a motorboat that is:
  - (a) less than 16 feet in length;
  - (b) propelled by a water jet pump; and
  - (c) designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than sitting or standing inside the vessel.
- (17) "Sailboat" means any vessel having one or more sails and propelled by wind.
- (18) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
- (19) "Wakeless speed" means an operating speed at which the vessel does not create or make a wake or white water trailing the vessel. This speed is not in excess of five miles per hour.
- (20) "Waters of this state" means any waters within the territorial limits of this state.

Amended by Chapter 386, 2011 General Session

### **73-18-3 Enforcement of State Boating Act to be supervised by division.**

The administration and enforcement of the State Boating Act shall be under the supervision and direction of the division.

Amended by Chapter 197, 1986 General Session

### **73-18-3.5 Advisory council.**

The board may appoint an advisory council representing various boating interests to seek recommendations on state boating policies.

Enacted by Chapter 99, 1987 General Session

### **73-18-4 Board may promulgate rules and set fees.**

- (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall promulgate rules:
  - (a) creating a uniform waterway marking system which shall be obeyed by all vessel operators;
  - (b) regulating the placement of waterway markers and other permanent or anchored objects on the waters of this state;
  - (c) zoning certain waters of this state for the purpose of prohibiting the operation of vessels or motors for safety and health purposes only;

- (d) regulating vessel operators who carry passengers for hire, boat liveries, and outfitting companies; and
  - (e) regulating anchored, beached, moored, or abandoned vessels to minimize health, safety, and environmental concerns.
- (2)
- (a) The board may set fees in accordance with Section 63J-1-504 for:
    - (i) licensing vessel operators who carry passengers for hire; and
    - (ii) registering:
      - (A) outfitting companies; and
      - (B) boat liveries.
  - (b) The license and registration fees imposed pursuant to Subsection (2)(a) shall be deposited into the Boating Account created in Section 73-18-22.

Amended by Chapter 386, 2011 General Session

**73-18-6 Numbering of motorboats and sailboats required -- Exception.**

- (1) Every motorboat and sailboat on the waters of this state shall be numbered. No person shall operate or give permission for the operation of any motorboat or sailboat on the waters of this state unless the motorboat or sailboat is numbered in accordance with:
- (a) this chapter;
  - (b) applicable federal law; or
  - (c) a federally-approved numbering system of another state, if the owner is a resident of that state and his motorboat or sailboat has not been in this state in excess of 60 days for the calendar year.
- (2) The number assigned to a motorboat or sailboat in accordance with this chapter, applicable federal law, or a federally-approved numbering system of another state shall be displayed on each side of the bow of the motorboat or sailboat, except this requirement does not apply to any vessel which has a valid marine document issued by the United States Coast Guard.

Amended by Chapter 99, 1987 General Session

**73-18-7 Registration requirements -- Exemptions -- Fee -- Agents -- Records -- Period of registration and renewal -- Expiration -- Notice of transfer of interest or change of address -- Duplicate registration card -- Invalid registration -- Powers of board.**

- (1)
- (a) Except as provided by Section 73-18-9, the owner of each motorboat and sailboat on the waters of this state shall register it with the division as provided in this chapter.
  - (b) A person may not place, give permission for the placement of, operate, or give permission for the operation of a motorboat or sailboat on the waters of this state, unless the motorboat or sailboat is registered as provided in this chapter.
- (2)
- (a) The owner of a motorboat or sailboat required to be registered shall file an application for registration with the division on forms approved by the division.
  - (b) The owner of the motorboat or sailboat shall sign the application and pay the fee set by the board in accordance with Section 63J-1-504.
  - (c) Before receiving a registration card and registration decals, the applicant shall provide the division with a certificate from the county assessor of the county in which the motorboat or sailboat has situs for taxation, stating that:

- (i) the property tax on the motorboat or sailboat for the current year has been paid;
  - (ii) in the county assessor's opinion, the property tax is a lien on real property sufficient to secure the payment of the property tax; or
  - (iii) the motorboat or sailboat is exempt by law from payment of property tax for the current year.
- (d) If the board modifies the fee under Subsection (2)(b), the modification shall take effect on the first day of the calendar quarter after 90 days from the day on which the board provides the State Tax Commission:
  - (i) notice from the board stating that the board will modify the fee; and
  - (ii) a copy of the fee modification.
- (3)
  - (a) Upon receipt of the application in the approved form, the division shall record the receipt and issue to the applicant registration decals and a registration card that state the number assigned to the motorboat or sailboat and the name and address of the owner.
  - (b) The registration card shall be available for inspection on the motorboat or sailboat for which it was issued, whenever that motorboat or sailboat is in operation.
- (4) The assigned number shall:
  - (a) be painted or permanently attached to each side of the forward half of the motorboat or sailboat;
  - (b) consist of plain vertical block characters not less than three inches in height;
  - (c) contrast with the color of the background and be distinctly visible and legible;
  - (d) have spaces or hyphens equal to the width of a letter between the letter and numeral groupings; and
  - (e) read from left to right.
- (5) A motorboat or sailboat with a valid marine document issued by the United States Coast Guard is exempt from the number display requirements of Subsection (4).
- (6) The nonresident owner of any motorboat or sailboat already covered by a valid number that has been assigned to it according to federal law or a federally approved numbering system of the owner's resident state is exempt from registration while operating the motorboat or sailboat on the waters of this state unless the owner is operating in excess of the reciprocity period provided for in Subsection 73-18-9(1).
- (7)
  - (a) If the ownership of a motorboat or sailboat changes, the new owner shall file a new application form and fee with the division, and the division shall issue a new registration card and registration decals in the same manner as provided for in Subsections (2) and (3).
  - (b) The division shall reassign the current number assigned to the motorboat or sailboat to the new owner to display on the motorboat or sailboat.
- (8) If the United States Coast Guard has in force an overall system of identification numbering for motorboats or sailboats within the United States, the numbering system employed under this chapter by the board shall conform with that system.
- (9)
  - (a) The division may authorize any person to act as its agent for the registration of motorboats and sailboats.
  - (b) A number assigned, a registration card, and registration decals issued by an agent of the division in conformity with this chapter and rules of the board are valid.
- (10)



- (a) The Motor Vehicle Division shall classify all records of the division made or kept according to this section in the same manner that motor vehicle records are classified under Section 41-1a-116.
  - (b) Division records are available for inspection in the same manner as motor vehicle records pursuant to Section 41-1a-116.
- (11)
- (a)
    - (i) Each registration, registration card, and decal issued under this chapter shall continue in effect for 12 months, beginning with the first day of the calendar month of registration.
    - (ii) A registration may be renewed by the owner in the same manner provided for in the initial application.
    - (iii) The division shall reassign the current number assigned to the motorboat or sailboat when the registration is renewed.
  - (b) Each registration, registration card, and registration decal expires the last day of the month in the year following the calendar month of registration.
  - (c) If the last day of the registration period falls on a day in which the appropriate state or county offices are not open for business, the registration of the motorboat or sailboat is extended to 12 midnight of the next business day.
  - (d) The division may receive applications for registration renewal and issue new registration cards at any time before the expiration of the registration, subject to the availability of renewal materials.
  - (e) The new registration shall retain the same expiration month as recorded on the original registration even if the registration has expired.
  - (f) The year of registration shall be changed to reflect the renewed registration period.
  - (g) If the registration renewal application is an application generated by the division through its automated system, the owner is not required to surrender the last registration card or duplicate.
- (12)
- (a) An owner shall notify the division of:
    - (i) the transfer of all or any part of the owner's interest, other than creation of a security interest, in a motorboat or sailboat registered in this state under Subsections (2) and (3); and
    - (ii) the destruction or abandonment of the owner's motorboat or sailboat.
  - (b) Notification must take place within 15 days of the transfer, destruction, or abandonment.
  - (c)
    - (i) The transfer, destruction, or abandonment of a motorboat or sailboat terminates its registration.
    - (ii) Notwithstanding Subsection (12)(c)(i), a transfer of a part interest that does not affect the owner's right to operate a motorboat or sailboat does not terminate the registration.
- (13)
- (a) A registered owner shall notify the division within 15 days if the owner's address changes from the address appearing on the registration card and shall, as a part of this notification, furnish the division with the owner's new address.
  - (b) The board may provide in its rules for:
    - (i) the surrender of the registration card bearing the former address; and
    - (ii)
      - (A) the replacement of the card with a new registration card bearing the new address; or
      - (B) the alteration of an existing registration card to show the owner's new address.
- (14)

- (a) If a registration card is lost or stolen, the division may collect a fee of \$4 for the issuance of a duplicate card.
- (b) If a registration decal is lost or stolen, the division may collect a fee of \$3 for the issuance of a duplicate decal.
- (15) A number other than the number assigned to a motorboat or sailboat or a number for a motorboat or sailboat granted reciprocity under this chapter may not be painted, attached, or otherwise displayed on either side of the bow of a motorboat or sailboat.
- (16) A motorboat or sailboat registration and number are invalid if obtained by knowingly falsifying an application for registration.
- (17) The board may designate the suffix to assigned numbers, and by following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules for:
  - (a) the display of registration decals;
  - (b) the issuance and display of dealer numbers and registrations; and
  - (c) the issuance and display of temporary registrations.

Amended by Chapter 183, 2009 General Session

#### **73-18-7.1 Fraudulent application for registration or certificate of title.**

A person is guilty of a third degree felony if he:

- (1) fraudulently uses a false or fictitious name in any application for a registration or certificate of title for a motorboat, sailboat, or outboard motor; or
- (2) in making an application specified in Subsection (1), he:
  - (a) knowingly makes a false statement;
  - (b) knowingly conceals a material fact; or
  - (c) otherwise commits a fraud.

Enacted by Chapter 216, 1990 General Session

#### **73-18-7.2 Falsified registration or certificate of title.**

It is a third degree felony for any person to:

- (1) alter with fraudulent intent any motorboat or sailboat certificate of title, registration card, or registration decal or outboard motor certificate of title issued by the division or its authorized agent;
- (2) forge or counterfeit any motorboat or sailboat certificate of title, registration card, or registration decal or outboard motor certificate of title purporting to have been issued by the division or its authorized agent;
- (3) alter, falsify, or forge any assignment upon a motorboat, sailboat, or outboard motor certificate of title; or
- (4) hold or use any motorboat or sailboat certificate of title, registration card, or registration decal or outboard motor certificate of title knowing it has been altered, forged, or falsified.

Enacted by Chapter 216, 1990 General Session

#### **73-18-7.3 Suspension or revocation of a registration or certificate of title.**

The division or its authorized agent may suspend or revoke the registration or certificate of title of a motorboat, sailboat, or outboard motor if:

- (1) the division or its authorized agent determines that the registration or certificate of title was fraudulently or erroneously issued;

- (2) the division or its authorized agent determines that a registered motorboat or sailboat is mechanically unfit or unseaworthy for operation on the waters of this state;
- (3) a registered motorboat or sailboat has been dismantled or wrecked so that it loses its character as a vessel;
- (4) the division or its authorized agent determines that the required registration or titling fee has not been paid or is not paid upon reasonable notice and demand;
- (5) a registration decal or number is knowingly displayed upon a motorboat or sailboat other than the one for which the decal or number was issued;
- (6) the division or its authorized agent determines that the owner has committed any offense under this chapter or Title 41, Chapter 1a, Part 5, Titling Requirement, involving the registration or certificate of title of a motorboat, sailboat, or outboard motor; or
- (7) the division or authorized agent is so authorized under any other provision of law.

Amended by Chapter 1, 1992 General Session

**73-18-7.4 Canceled, suspended, or revoked registration or certificate of title to be returned.**

If the division or its authorized agent cancels, suspends, or revokes the registration or certificate of title of a motorboat, sailboat, or outboard motor, the owner shall immediately return the canceled, suspended, or revoked registration card, registration decal, or certificate of title to the division or authorized agent.

Enacted by Chapter 216, 1990 General Session

**73-18-8 Safety equipment required to be on board vessels.**

- (1)
  - (a) Except as provided in Subsection (1)(c), each vessel shall have, for each person on board, one personal flotation device that is approved for the type of use by the commandant of the United States Coast Guard.
  - (b) Each personal flotation device shall be:
    - (i) in serviceable condition;
    - (ii) legally marked with the United States Coast Guard approval number; and
    - (iii) of an appropriate size for the person for whom it is intended.
  - (c)
    - (i) Sailboards are exempt from the provisions of Subsection (1)(a).
    - (ii) The board may exempt certain types of vessels from the provisions of Subsection (1)(a) under certain conditions or upon certain waters.
  - (d) The board may require by rule for personal flotation devices to be worn:
    - (i) while a person is on board a certain type of vessel;
    - (ii) by a person under a certain age; or
    - (iii) on certain waters of the state.
  - (e) For vessels 16 feet or more in length, there shall also be on board, one Type IV throwable personal flotation device which is approved for this use by the commandant of the United States Coast Guard.
- (2) The operator of a vessel operated between sunset and sunrise shall display lighted navigation lights approved by the division.
- (3) If a vessel is not entirely open and it carries or uses any flammable or toxic fluid in any enclosure for any purpose, the vessel shall be equipped with an efficient natural or mechanical

ventilation system that is capable of removing resulting gases before and during the time the vessel is occupied by any person.

- (4) Each vessel shall have fire extinguishing equipment on board.
- (5) Any inboard gasoline engine shall be equipped with a carburetor backfire flame control device.
- (6) The board may:
  - (a) require additional safety equipment by rule; and
  - (b) adopt rules conforming with the requirements of this section which govern specifications for and the use of safety equipment.
- (7) A person may not operate or give permission for the operation of a vessel that is not equipped as required by this section or rules promulgated under this section.

Amended by Chapter 256, 2010 General Session

#### **73-18-8.1 Capacity and certification label.**

- (1) Each vessel manufactured after November 1, 1972, which is less than 20 feet in length, except a sailboat, canoe, kayak, inflatable vessel, or homemade motor boat must have a United States Coast Guard capacity and certification label permanently affixed to the vessel and clearly visible to the operator when boarding or operating the vessel. The capacity and certification information may be combined together and displayed on one label.
- (2) No person shall operate, or give permission for the operation of, any vessel on the waters of this state if it is loaded or powered in excess of the maximum capacity information on the United States Coast Guard capacity label.
- (3) No person shall alter, deface, or remove any United States Coast Guard capacity or certification information label affixed to a vessel.
- (4) No person shall operate, or give permission for the operation of, a vessel on the waters of this state if the required United States Coast Guard capacity or certification information label has been altered, defaced, or removed.

Enacted by Chapter 216, 1990 General Session

#### **73-18-9 Exemptions from registration.**

Registration under this chapter is not required for any of the following:

- (1) a motorboat or sailboat that:
  - (a) is already covered by a valid registration issued by its nonresident owner's resident state; and
  - (b) has not been within this state in excess of 60 days for the calendar year;
- (2) a motorboat or sailboat from a country other than the United States temporarily using the waters of this state;
- (3) a motorboat or sailboat whose owner is the United States, a state or subdivision thereof;
- (4) a ship's lifeboat; or
- (5) a motorboat or sailboat belonging to a class of vessels which is exempted from registration by the board after the board finds:
  - (a) that the registration of motorboats or sailboats of this class will not materially aid in their identification; and
  - (b) that the United States Coast Guard has a numbering system applicable to the class of motorboats or sailboats to which the motorboat or sailboat in question belongs, and the motorboat or sailboat would also be exempt from numbering if it were subject to federal law.

Amended by Chapter 94, 2008 General Session

**73-18-10 Owner of boat livery -- Duties.**

- (1) The owner of a boat livery shall keep a record of the following: the name and address of the person hiring any vessel; the identification number of the vessel; the vessel's departure date and time; and the vessel's expected time of return. The record shall be preserved for at least one year.
- (2) Neither the owner of a boat livery nor his agent or employee may permit any vessel to depart from the premises of the boat livery unless the owner has equipped it as required under this chapter and unless he has advised the lessee or renter of the vessel of all rules promulgated under this chapter which the lessee or renter must obey.

Amended by Chapter 197, 1986 General Session

**73-18-11 Regulation of muffling devices.**

The board shall adopt rules for the regulating of muffling devices on all vessels.

Amended by Chapter 197, 1986 General Session

**73-18-12 Operation in willful or wanton disregard for safety -- Penalty.**

- (1) A person may not operate any nonmotorized vessel, or manipulate any water skis or any device towed by a motorboat in a willful or wanton disregard for the safety of persons or property.
- (2) A violation of Subsection (1) is a class B misdemeanor.

Amended by Chapter 200, 2002 General Session

**73-18-13 Duties of operator involved in accident -- Notification and reporting procedures -- Use of accident reports -- Giving false information as misdemeanor.**

- (1) As used in this section, "agent" has the same meaning as provided in Section 41-6a-404.
- (2)
  - (a) It is the duty of the operator of a vessel involved in an accident, if the operator can do so without seriously endangering the operator's own vessel, crew, or passengers, to render aid to those affected by the accident as may be practicable.
  - (b) The operator shall also give the operator's name, address, and identification of the operator's vessel in writing to:
    - (i) any person injured; or
    - (ii) the owner of any property damaged in the accident.
- (3)
  - (a) The board shall adopt rules governing the notification and reporting procedure for vessels involved in accidents.
  - (b) The rules shall be consistent with federal requirements.
- (4)
  - (a) Except as provided in Subsection (4)(b), all accident reports:
    - (i) are protected and shall be for the confidential use of the division or other state, local, or federal agencies having use for the records for official governmental statistical, investigative, and accident prevention purposes; and
    - (ii) may be disclosed only in a statistical form that protects the privacy of any person involved in the accident.
  - (b) The division shall disclose a written accident report and its accompanying data to:

- (i) a person involved in the accident, excluding a witness to the accident;
  - (ii) a person suffering loss or injury in the accident;
  - (iii) an agent, parent, or legal guardian of a person described in Subsections (4)(b)(i) and (ii);
  - (iv) a member of the press or broadcast news media;
  - (v) a state, local, or federal agency that uses the records for official governmental, investigative, or accident prevention purposes;
  - (vi) law enforcement personnel when acting in their official governmental capacity; and
  - (vii) a licensed private investigator.
- (c) Information provided to a member of the press or broadcast news media under Subsection (4)(b)(iv) may only include:
- (i) the name, age, sex, and city of residence of each person involved in the accident;
  - (ii) the make and model year of each vehicle involved in the accident;
  - (iii) whether or not each person involved in the accident was covered by a vehicle insurance policy;
  - (iv) the location of the accident; and
  - (v) a description of the accident that excludes personal identifying information not listed in Subsection (4)(c)(i).
- (5)
- (a) Except as provided in Subsection (5)(c), an accident report may not be used as evidence in any civil or criminal trial, arising out of an accident.
  - (b) Upon demand of any person who has, or claims to have, made the report, or upon demand of any court, the division shall furnish a certificate showing that a specified accident report has or has not been made to the division solely to prove a compliance or a failure to comply with the requirement that a report be made to the division.
  - (c) Accident reports may be used as evidence when necessary to prosecute charges filed in connection with a violation of Subsection (6).
- (6) Any person who gives false information, knowingly or having reason to believe it is false, in an oral or written report as required in this chapter, is guilty of a class A misdemeanor.

Amended by Chapter 153, 2012 General Session

**73-18-13.1 Accident involving property damage -- Duties of operator, occupant, and owner -- Penalties.**

- (1) As used in this section, "reason to believe" means information from which a reasonable person would believe that the person may have been involved in an accident.
- (2)
  - (a) The operator of a vessel who has reason to believe that the operator may have been involved in an accident resulting only in damage to another vessel or other property shall remain at the scene of the accident until the operator has fulfilled the requirements of Section 73-18-13.
  - (b) If the operator has reason to believe that the operator may have been involved in an accident resulting in damage to another vessel or other property only after leaving the scene of the accident, the operator shall immediately comply as nearly as possible with the requirements of Section 73-18-13.
- (3) A person who violates the provisions of this section is guilty of a class B misdemeanor.

Enacted by Chapter 153, 2012 General Session

**73-18-13.2 Accident involving injury -- Stop at accident -- Penalty.**

- (1) As used in this section:
  - (a) "Reason to believe" means information from which a reasonable person would believe that the person may have been involved in an accident.
  - (b) "Serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (2)
  - (a) The operator of a vessel who has reason to believe that the operator may have been involved in an accident resulting in injury to a person shall:
    - (i) immediately stop the vessel at the scene of the accident or as close to it as safely possible; and
    - (ii) remain at the scene of the accident until the operator has fulfilled the requirements of Section 73-18-13.
  - (b) If the operator of a vessel has reason to believe the operator may have been involved in an accident only after leaving the scene of the accident, the operator shall immediately comply as nearly as possible with the requirements of Section 73-18-13.
- (3)
  - (a) Except as provided in Subsection (3)(b), a person who violates the provisions of Subsection (2):
    - (i) is guilty of a class A misdemeanor if the accident resulted in injury to any person; and
    - (ii) shall be fined not less than \$750.
  - (b) A person who violates the provisions of Subsection (2):
    - (i) is guilty of a third degree felony if the accident resulted in serious bodily injury to a person; and
    - (ii) shall be fined not less than \$750.

Enacted by Chapter 153, 2012 General Session

**73-18-13.3 Accident involving death -- Stop at accident -- Penalty.**

- (1) As used in this section, "reason to believe" means information from which a reasonable person would believe that the person may have been involved in an accident.
- (2)
  - (a) The operator of a vessel who has reason to believe that the operator may have been involved in an accident resulting in the death of a person shall:
    - (i) immediately stop the vessel at the scene of the accident or as close to it as safely possible; and
    - (ii) remain at the scene of the accident until the operator has fulfilled the requirements of Section 73-18-13.
  - (b) If the operator of a vessel has reason to believe the operator may have been involved in an accident only after leaving the scene of the accident, the operator shall immediately comply as nearly as possible with the requirements of Section 73-18-13.
- (3) A person who violates the provisions of Subsection (2) is guilty of a third degree felony and shall be fined not less than \$750.

Enacted by Chapter 153, 2012 General Session

**73-18-13.5 Motorboat accidents -- Investigation and report of operator security -- Agency action if no security -- Surrender of registration materials.**

- (1) Upon request of a peace officer investigating an accident involving a motorboat as defined in Section 73-18c-102, the operator of the motorboat shall provide evidence of the owner's or operator's security required under Section 73-18c-301.
- (2) The peace officer shall record on a form approved by the division:
  - (a) the information provided by the operator;
  - (b) whether the operator provided insufficient or no information; and
  - (c) whether the peace officer finds reasonable cause to believe that any information given is not correct.
- (3) The peace officer shall deposit all completed forms with the peace officer's agency, which shall forward the forms to the division no later than 10 days after receipt.
- (4)
  - (a) The division shall revoke the registration of a motorboat as defined in Section 73-18c-102 involved in an accident unless the owner or operator can demonstrate to the division compliance with the owner's or operator's security requirement of Section 73-18c-301 at the time of the accident.
  - (b) Any registration revoked shall be renewed in accordance with Section 73-18-7.
- (5) A person may appeal a revocation issued under Subsection (4) in accordance with procedures established by the board by rule that are consistent with Title 63G, Chapter 4, Administrative Procedures Act.
- (6)
  - (a) Any person whose registration is revoked under Subsection (4) shall return the registration card and decals for the motorboat to the division.
  - (b) If the person fails to return the registration materials as required, they shall be confiscated under Section 73-18-13.6.
- (7) The board may make rules for the enforcement of this section.
- (8) In this section, "evidence of owner's or operator's security" includes any one of the following:
  - (a) the operator's:
    - (i) insurance policy;
    - (ii) binder notice;
    - (iii) renewal notice; or
    - (iv) card issued by an insurance company as evidence of insurance;
  - (b) a copy of a surety bond, certified by the surety, which conforms to Section 73-18c-102;
  - (c) a certificate of the state treasurer issued under Section 73-18c-305; or
  - (d) a certificate of self-funded coverage issued under Section 73-18c-306.

Amended by Chapter 386, 2011 General Session

**73-18-13.6 Grounds for confiscation of registration materials by state -- Registration renewal.**

- (1)
  - (a) The division, any peace officer acting in an official capacity, or a person authorized under Subsection (2) may take possession of any registration card or decal issued by the state:
    - (i) upon revocation of it;
    - (ii) that is fictitious;
    - (iii) that has been unlawfully or erroneously issued; or
    - (iv) that is unlawfully or erroneously displayed.
  - (b) A receipt shall be issued that describes each confiscated item.



- (2) The division may enter into contractual agreements with constables or other law enforcement agencies to facilitate confiscation of items listed in Subsection (1) if a person fails or refuses to surrender any of those documents to the division upon demand.
- (3) The division shall renew a registration that has been revoked under this section in accordance with the provisions of Section 73-18-7.

Amended by Chapter 386, 2011 General Session

**73-18-14 Transmittal of information to official or agency of United States.**

In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the division under Section 73-18-13 shall be transmitted to the official or agency of the United States.

Amended by Chapter 335, 2000 General Session

**73-18-15 Board to adopt rules concerning water skiing and aquaplane riding and use of other devices towed behind a vessel.**

The board shall adopt rules for the regulation and safety of water skiing and aquaplane riding, and the use of other devices that are towed behind a vessel pursuant to this section and in accordance with Section 73-18-16.

Amended by Chapter 411, 2012 General Session

**73-18-15.1 Vessel navigation and steering laws.**

- (1) The operator of a vessel shall maintain a proper lookout by sight and hearing at all times to avoid the risk of collision.
- (2) When the operators of two motorboats approach each other where there is risk of collision, each operator shall alter course to the right and pass on the left side of the other.
- (3) When the operators of two motorboats are crossing paths and are at risk of a collision, the operator of the vessel that has the other vessel on its right side shall keep out of the way and yield right-of-way if necessary.
- (4) The operator of any vessel overtaking any other vessel shall keep out of the way of the vessel being overtaken.
- (5) The operator of a vessel underway shall keep out of the way of a:
  - (a) vessel not under command;
  - (b) vessel restricted in its ability to maneuver;
  - (c) vessel engaged in fishing; and
  - (d) sailing vessel.
- (6) If the operator of one of two vessels is to keep out of the way, the other vessel operator shall maintain his course and speed unless it becomes apparent the other vessel is not taking the appropriate action.
- (7) In narrow channels an operator of a vessel underway shall keep to the right of the middle of the channel.
- (8) The operator of a vessel shall proceed at a safe speed at all times so that the operator can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances or conditions.
- (9)

- (a) When the operators of two sailboats are approaching one another so as to involve risk of collision, one of the operators shall keep out of the way of the other as follows:
  - (i) when each has the wind on a different side, the operator of the vessel that has the wind on the left side shall keep out of the way of the other;
  - (ii) when both have the wind on the same side, the operator of the vessel that is to the windward shall keep out of the way of the vessel that is to leeward; and
  - (iii) if the operator of a vessel with the wind on the left side sees a vessel to windward and cannot determine with certainty whether the other vessel has the wind on the left or on the right side, the operator shall keep out of way of the other vessel.
- (b) For purposes of this Subsection (9), the windward side shall be the side opposite that on which the mainsail is carried.
- (10) The operator of any vessel may not exceed a wakeless speed when within 150 feet of:
  - (a) another vessel;
  - (b) a person in or floating on the water;
  - (c) a water skier being towed by another boat;
  - (d) a water skier that had been towed behind the operator's vessel unless the skier is still surfing or riding in an upright stance on the wake created by the vessel;
  - (e) a water skier that had been towed behind another vessel and the skier is still surfing or riding in an upright stance on the wake created by the other vessel;
  - (f) a shore fisherman;
  - (g) a launching ramp;
  - (h) a dock; or
  - (i) a designated swimming area.
- (11) The operator of a motorboat is responsible for any damage or injury caused by the wake produced by the operator's motorboat.
- (12)
  - (a) Except as provided in Subsection (12)(b), the operator of a motorboat that is less than 65 feet in length may not exceed a wakeless speed while any person is riding upon the bow decking, gunwales, transom, seatbacks, or motor cover.
  - (b) Subsection (12)(a) does not apply if the motorboat is:
    - (i) between 16 feet and 65 feet in length; and
    - (ii) the motorboat is equipped with adequate rails or other safeguards to prevent a person from falling overboard.
- (13) If a person is riding upon the bow decking of a motorboat that does not have designed seating for passengers, the person shall straddle one of the upright supports of the bow rail and may not block the vision of the operator.
- (14) The operator of a vessel may not tow a water skier or a person on another device:
  - (a) unless an onboard observer, who is at least eight years of age, is designated by the operator to watch the person being towed; or
  - (b) between sunset and sunrise.
- (15) A person who violates this section is guilty of a class C misdemeanor.

Amended by Chapter 256, 2010 General Session

**73-18-15.2 Minimum age of operators -- Boating safety course for youth to operate personal watercraft.**

(1)

- (a) A person under 16 years of age may not operate a motorboat on the waters of this state unless the person is under the on-board and direct supervision of a person who is at least 18 years of age.
- (b) A person under 16 years of age may operate a sailboat, if the person is under the direct supervision of a person who is at least 18 years of age.
- (2) A person who is at least 12 years of age or older but under 16 years of age may operate a personal watercraft provided he:
  - (a) is under the direct supervision of a person who is at least 18 years of age;
  - (b) completes a boating safety course approved by the division; and
  - (c) has in his possession a boating safety certificate issued by the boating safety course provider.
- (3) A person who is at least 16 years of age but under 18 years of age may operate a personal watercraft, if the person:
  - (a) completes a boating safety course approved by the division; and
  - (b) has in his possession a boating safety certificate issued by the boating safety course provider.
- (4) A person required to attend a boating safety course under Subsection (3)(a) need not be accompanied by a parent or legal guardian while completing a boating safety course.
- (5) A person may not give permission to another person to operate a vessel in violation of this section.
- (6) As used in this section, "direct supervision" means oversight at a distance within which visual contact is maintained.
- (7)
  - (a) The division may collect fees set by the board in accordance with Section 63J-1-504 from each person who takes the division's boating safety course to help defray the cost of the boating safety course.
  - (b) Money collected from the fees collected under Subsection (7)(a) shall be deposited in the Boating Account.

Amended by Chapter 183, 2009 General Session

**73-18-15.3 Personal watercraft -- Prohibition on operation between sunset and sunrise.**

A person may not operate a personal watercraft on the waters of this state between sunset and sunrise.

Enacted by Chapter 205, 1998 General Session

**73-18-15.5 Authorizing or permitting driving a vessel in violation of law.**

- (1) A person may not authorize or knowingly permit a vessel owned by him or that is under his control to be driven by a person in violation of this chapter or Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving.
- (2) A person who violates Subsection (1) is guilty of a class C misdemeanor.

Amended by Chapter 2, 2005 General Session

**73-18-16 Regattas, races, exhibitions -- Rules.**

- (1) The division may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments, or exhibitions on any waters of this state.
- (2) The board may adopt rules concerning the safety of vessels and persons, either as observers or participants, that do not conflict with the provisions of Subsections (3) and (4).

- (3) A person may elect, at the person's own risk, to wear a non-Coast Guard approved personal floatation device if the person is on an American Water Ski Association regulation tournament slalom course and is:
  - (a) engaged in barefoot water skiing;
  - (b) water skiing in an American Water Ski Association regulation competition;
  - (c) a performer participating in a professional exhibition or other tournament; or
  - (d) practicing for an event described in Subsection (3)(b) or (c).
- (4) If a person is water skiing in an American Water Ski Association regulation tournament slalom course, an observer and flag are not required if the vessel is:
  - (a) equipped with a wide angle mirror with a viewing surface of at least 48 square inches; and
  - (b) operated by a person who is at least 18 years of age.

Amended by Chapter 411, 2012 General Session

**73-18-17 Scope of application of chapter -- Identical local ordinances authorized -- Application for special local rules.**

- (1) This chapter, and other applicable laws of this state govern the operation, equipment, and numbering of vessels whenever any vessel is operated on the waters of this state, or when any activity regulated by this chapter takes place on the waters of this state. Nothing in this chapter prevents the adoption of any ordinance or local law relating to operation and equipment of vessels, the provisions of which are identical to the provisions of this chapter, amendments to this chapter, and rules promulgated under this chapter. Ordinances or local laws shall be operative only so long as and to the extent that they continue to be identical to provisions of this chapter, amendments to this chapter, and rules promulgated under this chapter.
- (2) Any political subdivision of this state may, at any time, but only after public notice, formally apply to the board for special rules concerning the operation of vessels on any waters within its territorial limits. The political subdivision shall set forth in the application the reasons which make special rules necessary or appropriate.

Amended by Chapter 99, 1987 General Session

**73-18-18 Liability of owner for injury or damage occasioned by negligent operation of vessel by minor.**

The owner of a vessel shall be liable for any injury or damage occasioned by the negligent operation of such vessel, by a minor under the age of 18 years operating such vessel with the express or implied consent of the owner, whether under the laws of this state or by neglecting to observe such ordinary care and such operation as the rules of common law require.

Amended by Chapter 170, 1961 General Session

**73-18-19 Publication of rules and regulations.**

The rules promulgated under this chapter shall be published as required by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 382, 2008 General Session

**73-18-20 Enforcement of chapter -- Authority to stop and board vessels -- Disregarding law enforcement signal to stop as misdemeanor -- Procedure for arrest.**

- (1) Any law enforcement officer authorized under Title 53, Chapter 13, Peace Officer Classifications, may enforce the provisions of this chapter and the rules promulgated under this chapter.
- (2) Any law enforcement officer authorized under Title 53, Chapter 13, Peace Officer Classifications, has the authority to stop and board any vessel subject to this chapter, whether the vessel is on water or land. If that officer determines the vessel is overloaded, unseaworthy, or the safety equipment required by this chapter or rules of the board is not on the vessel, that officer may prohibit the launching of the vessel or stop the vessel from operating.
- (3) An operator who, having received a visual or audible signal from a law enforcement officer authorized under Title 53, Chapter 13, Peace Officer Classifications, to bring his vessel to a stop, operates his vessel in willful or wanton disregard of the signal so as to interfere with or endanger the operation of any vessel or endanger any person, or who attempts to flee or elude the officer whether by vessel or otherwise is guilty of a class A misdemeanor.
- (4) Whenever any person is arrested for any violation of the provisions of this chapter or of the rules promulgated under this chapter, the procedure for arrest is the same as outlined in Sections 77-7-22 through 77-7-24.

Amended by Chapter 2, 2005 General Session

#### **73-18-20.1 Seizure of a vessel.**

- (1) A peace officer, without a warrant, may seize and take possession of a vessel:
  - (a) that is placed or being operated on the waters of this state with improper registration;
  - (b) that the peace officer has reason to believe has been stolen;
  - (c) on which any hull identification number or serial number for an engine or outboard motor has been defaced, altered, or obliterated;
  - (d) that has been abandoned on public land, highways, or waters of this state; or
  - (e) if the registration or title fees for the vessel or outboard motor have not been paid.
- (2) If necessary for the transportation of a seized vessel, the vessel's trailer may be seized to transport and store the vessel.
- (3) Any peace officer seizing or taking possession of a vessel under this section shall comply with the provisions of Section 41-6a-1406.

Amended by Chapter 2, 2005 General Session

#### **73-18-20.2 Defaced, altered, or obliterated identification or serial number -- Release of vessel.**

If the hull identification number or serial number for the engine or outboard motor of a vessel seized under Section 73-18-20.1 has been defaced, altered, or obliterated, the vessel may not be released until:

- (1) the original manufacturer's hull identification number or engine or outboard motor serial number has been replaced; or
- (2) a new number assigned by the division or its authorized agent has been provided and has been affixed to the vessel, engine, or outboard motor.

Amended by Chapter 202, 2001 General Session

#### **73-18-20.3 Falsified hull identification, engine, or motor number.**

- (1) A person is guilty of a third degree felony if he:

- (a) with fraudulent intent defaces, destroys, or alters a vessel hull identification number or serial number for an engine or outboard motor;
  - (b) places or stamps any vessel hull identification number upon a vessel or serial number upon an engine or outboard motor, except one assigned by the division or its authorized agent;
  - (c) knowingly buys, receives, disposes of, sells, offers for sale, or has in his possession any vessel, or engine or outboard motor removed from a vessel, from which the vessel hull identification number or engine or outboard motor serial number, has been removed, defaced, covered, altered, or destroyed for the purpose of concealing or misrepresenting the identity of the vessel, engine, or outboard motor;
  - (d) with intent to procure or pass title to a vessel or outboard motor, receives or transfers possession of a vessel or outboard motor which he knows or has reason to believe has been stolen or unlawfully taken; or
  - (e) has in his possession a vessel or outboard motor which he knows or has reason to believe has been stolen or unlawfully taken, unless the person is a peace officer engaged at the time in the performance of his duty.
- (2)
- (a) This section does not prohibit the restoration by an owner of an original vessel hull identification number or manufacturer's serial number for an engine or outboard motor if the restoration is made by application to the division or its authorized agent.
  - (b) This section does not prohibit any manufacturer from placing, in the ordinary course of business, numbers or marks upon vessels, motors, outboard motors, or parts.

Enacted by Chapter 216, 1990 General Session

#### **73-18-20.4 Duty to report falsified vessel or motor number.**

Any person owning or operating a marina, marine dealership, service station, public garage, paint shop, or a vessel repair shop shall immediately notify the local police authorities of any vessel or outboard motor that has any numbers that have apparently been altered, obliterated, or removed.

Enacted by Chapter 216, 1990 General Session

#### **73-18-20.5 Reporting of theft and recovery of vessels.**

- (1)
- (a) Any peace officer upon receiving reliable information that any vessel or outboard motor has been stolen shall immediately report the theft to the Criminal Investigations and Technical Services Division of the Department of Public Safety, established in Section 53-10-103.
  - (b) Any peace officer upon receiving information that any vessel or outboard motor which was previously reported as stolen has been recovered shall immediately report the recovery to his law enforcement agency and to the Criminal Investigations and Technical Services Division.
- (2) The reporting and recovery procedures for vessels and outboard motors shall be the same as those specified in Section 41-1a-1401 for motor vehicles.

Amended by Chapter 263, 1998 General Session

#### **73-18-20.6 Report by owners or lienholders of thefts and recoveries.**

- (1) The owner, or person having a lien or encumbrance upon a registered vessel or outboard motor which has been stolen or embezzled, may notify the law enforcement agency having jurisdiction

where the theft or embezzlement occurred. If a vessel or outboard motor was embezzled, a report may be made only after having procured the issuance of a warrant for the arrest of the person charged with embezzlement.

- (2) Any person who has given any notice under Subsection (1) shall notify the law enforcement agency where the theft or embezzlement was reported of a recovery of the vessel or outboard motor.

Enacted by Chapter 216, 1990 General Session

**73-18-20.7 Unlawful control over vessels -- Penalties -- Effect of prior consent -- Accessory or accomplice.**

- (1) Any person who exercises unauthorized control over a vessel, not his own, without the consent of the owner or lawful custodian and with intent to temporarily deprive the owner or lawful custodian of possession of the vessel, is guilty of a class A misdemeanor.
- (2) An offense under this section is a third degree felony if the actor does not return the vessel to the owner or lawful custodian within 24 hours after the exercise of unauthorized control.
- (3) The consent of the owner or legal custodian of a vessel to its control by the actor is not in any case presumed or implied because of the owner's or legal custodian's consent on a previous occasion to the control of the vessel by the same or a different person.
- (4) Any person who assists in, or is a party or accessory to or an accomplice in, an unauthorized taking or operating of a vessel is guilty of a class A misdemeanor.

Enacted by Chapter 216, 1990 General Session

**73-18-21 Violation of chapter as class B misdemeanor.**

Unless otherwise specified, any person who violates any provision of this chapter or rule promulgated under this chapter is guilty of a class B misdemeanor.

Amended by Chapter 99, 1987 General Session

**73-18-22 Boating Account created -- Contents -- Use of money.**

- (1) There is created within the General Fund a restricted account known as the Boating Account.
- (2) Except as provided under Sections 73-18-24 and 73-18-25, all registration fees and related money collected by the division or any authorized agent, less the costs of collecting motorboat and sailboat registration fees by an authorized agent, shall be deposited into the Boating Account.
- (3) The amount retained by an authorized agent may not exceed 20% of the fees charged in Section 73-18-7.
- (4) Money in the Boating Account may be used for:
  - (a) the construction, improvement, operation, and maintenance of publicly owned boating facilities;
  - (b) boater education; and
  - (c) the payment of the costs and expenses of the division in administering and enforcing this chapter.

Amended by Chapter 212, 2003 General Session

**73-18-23 Separability clause.**

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the rest of this act shall not be affected thereby.

Enacted by Chapter 170, 1961 General Session

**73-18-24 Search and rescue fee -- Amount -- Deposition.**

- (1) In addition to the fee imposed under Section 73-18-7, there is imposed a search and rescue fee of 50 cents on each motorboat or sailboat required to pay the fee imposed under Subsection 73-18-7(2) to be registered or renewed under Section 73-18-7.
- (2) The fees imposed under this section shall be collected in the same manner and by the same agency designated to collect the fees imposed under this chapter.
- (3) The fees collected under this section shall be deposited in the General Fund as dedicated credits for the Search and Rescue Financial Assistance Program created under Section 53-2a-1101.

Amended by Chapter 295, 2013 General Session

**73-18-25 Fees to cover the costs of electronic payments.**

- (1) As used in this section:
  - (a) "Electronic payment" has the same meaning as defined in Section 41-1a-1221.
  - (b) "Electronic payment fee" has the same meaning as defined in Section 41-1a-1221.
- (2)
  - (a) The Motor Vehicle Division may collect an electronic payment fee on all registrations and renewals of registration under Section 73-18-7.
  - (b) The fee described under Subsection (2)(a) shall be imposed regardless of the method of payment for a particular transaction.
- (3) The Motor Vehicle Division shall establish the fee according to the procedures and requirements of Section 63J-1-504.
- (4) A fee imposed under this section:
  - (a) shall be deposited in the Electronic Payment Fee Restricted Account created by Section 41-1a-121;
  - (b) is not subject to Subsection 63J-2-202(2); and
  - (c) need not be separately identified from the fees imposed on registrations and renewals of registration under Section 73-18-7.

Amended by Chapter 189, 2011 General Session

**Chapter 18a**  
**Boating - Litter and Pollution Control**

**73-18a-1 Definitions.**

As used in this chapter:

- (1) "Board" means the Board of Parks and Recreation.
- (2) "Division" means the Division of Parks and Recreation.
- (3) "Human body waste" means excrement, feces, or other waste material discharged from the human body.



- (4) "Litter" means any bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, rubbish, or similar refuse discarded as no longer useful.
- (5) "Marine toilet" means any toilet or other receptacle permanently installed on or within any vessel for the purpose of receiving human body waste. This term does not include portable toilets which may be removed from a vessel in order to empty its contents.
- (6) "Operate" means to navigate, control, or otherwise use a vessel.
- (7) "Operator" means the person who is in control of a vessel while it is in use.
- (8) "Owner" means a person, other than a lien holder, holding a proprietary interest in or the title to a vessel. The term does not include a lessee under a lease not intended as security.
- (9) "Vessel" means every type of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.
- (10) "Waters of this state" means all waters within the territorial limits of this state except those used exclusively for private purposes.

Amended by Chapter 197, 1986 General Session

**73-18a-2 Littering and pollution of water or lands prohibited -- Penalty.**

- (1) A person may not place, throw, deposit, discard, drop, or discharge and the operator of a vessel may not permit to be placed, thrown, deposited, discarded, dropped, or discharged into or upon the waters of this state, or lands adjacent to these waters any litter, human body waste, or other liquid or solid materials which may render the water or lands unsightly, noxious, or otherwise unwholesome or detrimental to the public health or welfare or the enjoyment of the water or lands for all legitimate uses, including recreational purposes.
- (2) A person violating any provision of Subsection (1) is guilty of a class B misdemeanor and shall be fined not less than \$100 for each violation.

Amended by Chapter 33, 1991 General Session

**73-18a-3 Marine toilets -- Use without pollution control device prohibited -- Containers of body waste -- Discharge into waters prohibited.**

- (1) No marine toilet on any vessel used or operated upon the waters of this state may be operated so as to discharge any inadequately treated human body waste into or upon waters of this state directly or indirectly.
- (2) No person owning or operating a vessel with a marine toilet may use, or permit the use of, a toilet on the waters of this state, unless the toilet is equipped with facilities that will adequately treat, hold, incinerate, or otherwise handle human body waste in a manner that is capable of preventing water pollution.
- (3) No container of human body waste may be placed, left, discharged, or caused to be placed, left, or discharged into or upon any waters of this state or lands adjacent to these waters by any person at any time.

Amended by Chapter 197, 1986 General Session

**73-18a-4 Marine toilets -- Pollution control devices required -- Rules established by board.**

- (1) Every marine toilet on a vessel used or operated upon the waters of this state shall be equipped with an approved pollution control device in operative condition.

- (2) The board shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as provided in this chapter, establishing criteria or standards for definition and approval of acceptable pollution control devices for vessels.

Amended by Chapter 382, 2008 General Session

**73-18a-5 Chemical treatment of marine toilet contents -- Rules established by board and Department of Environmental Quality.**

The board shall establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, with approval by the Department of Environmental Quality, as provided in this chapter, standards relating to chemical treatment of marine toilet contents.

Amended by Chapter 382, 2008 General Session

**73-18a-8 Public marinas -- Duty to maintain waste disposal facilities.**

The owner or whoever is lawfully vested with the possession, management, or control of a public marina or other public waterside facility used by a vessel for launching, docking, mooring, and related purposes shall be required to have, and properly maintain, waste receptacles or similar devices of proper design for the depositing of waste, litter, and human body waste, as required at locations where they can be conveniently used by a vessel's occupants. Waterside toilet facilities may be required if their absence contributes to or creates unsightliness or a hazard to the public health and welfare.

Amended by Chapter 197, 1986 General Session

**73-18a-9 Public educational program.**

The division may undertake and enlist the support and cooperation of all agencies, political subdivisions, and organizations to conduct a public educational program designed to inform the public of the undesirability of depositing trash, litter, and other objectionable materials in the waters of this state and the penalties provided by this chapter for such action. The division may use funds provided by the Legislature for this purpose. The division may utilize all means of communication in the conduct of this program.

Amended by Chapter 197, 1986 General Session

**73-18a-10 Enforcement -- Inspection of vessels, marinas, and other boating facilities.**

Enforcement of this chapter or the rules promulgated under it shall be by law enforcement officers. Any vessel in this state is subject to inspection by the officers for the purpose of determining whether the vessel is equipped in compliance with this chapter. If the vessel is not so equipped, the division may suspend its registration until the proper installation is completed or the marine toilet is sealed in a manner which prohibits its use. The division may inspect marinas or other waterside public facilities used by vessels for launching, docking, or mooring purposes to determine whether they are adequately equipped for proper handling, storing, or disposal of waste, litter, or human body waste.

Amended by Chapter 99, 1987 General Session

**73-18a-11 Regulation by political subdivisions prohibited -- Exception.**

Through the passage of this chapter, the state fully reserves to itself the exclusive right to establish requirements concerning the disposal of human body waste and litter from a vessel. To ensure statewide uniformity of the disposal of litter or human body waste from a vessel, regulation, other than the adoption for local enforcement of state rules, by any political subdivision of the state is prohibited.

Amended by Chapter 197, 1986 General Session

**73-18a-12 Rules promulgated by board -- Subject to approval by Department of Environmental Quality.**

The board may promulgate rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which are necessary for the carrying out of duties, obligations, and powers conferred on the division by this chapter. These rules shall be subject to review and approval by the Department of Environmental Quality. This approval shall be recorded as part of the rules.

Amended by Chapter 382, 2008 General Session

**73-18a-13 Publication of rules.**

The rules promulgated under this chapter shall be published as required by the Utah Administrative Rulemaking Act.

Amended by Chapter 99, 1987 General Session

**73-18a-14 Violation of chapter as class B misdemeanor.**

Unless otherwise specified, any person who violates any provision of this chapter or rule promulgated under this chapter is guilty of a class B misdemeanor.

Amended by Chapter 99, 1987 General Session

**73-18a-15 Arrest for violation -- Procedure.**

Whenever any person is arrested for any violation of the provisions of this chapter or rule promulgated under this chapter, the procedure for arrest is the same as specified in Sections 77-7-22 through 77-7-24.

Amended by Chapter 2, 2005 General Session

**73-18a-18 Act supplemental to other laws.**

This act shall not be construed as repealing any laws of the state relating to the pollution or littering of waters or lands thereof or any conservation laws, but shall be held and construed as auxiliary and supplemental thereto.

Enacted by Chapter 195, 1967 General Session

**Chapter 18b  
Water Safety**

**73-18b-1 Water safety rules and regulations -- Adoption.**

- (1) The Board of Parks and Recreation may make rules necessary to promote safety in swimming, scuba diving, and related activities on any waters where public boating is permitted.
- (2) The Board of Parks and Recreation may consider recommendations of and cooperate with other state agencies and the owners or operators of those waters.

Amended by Chapter 136, 2007 General Session

**73-18b-2 Filing and publishing regulations.**

A copy of the regulations adopted pursuant to this act and any amendments thereto shall be filed in the office of the commission and with the Division of Archives and shall be published in a convenient form.

Amended by Chapter 67, 1984 General Session

**73-18b-4 Enforcement of regulations.**

- (1) The Board of Parks and Recreation shall designate officers to enforce board rules made under the authority of this chapter.
- (2) Those officers have the same authority in making arrests and responsibility in arrest procedures as they have in their other enforcement activities.

Amended by Chapter 276, 1997 General Session

**Chapter 18c**  
**Financial Responsibility of Motorboat Owners and Operators Act**

**Part 1**  
**General Provisions**

**73-18c-101 Title.**

This chapter is known as the "Financial Responsibility of Motorboat Owners and Operators Act."

Amended by Chapter 211, 2006 General Session

**73-18c-102 Definitions.**

As used in this chapter:

- (1) "Airboat" means a vessel propelled by air pressure caused by an airplane type propeller mounted above the stern and driven by an internal combustion engine.
- (2) "Board" means the Board of Parks and Recreation.
- (3) "Division" means the Division of Parks and Recreation.
- (4) "Judgment" means any judgment that is final by:
  - (a) expiration without appeal of the time within which an appeal might have been perfected; or
  - (b) final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action for damages:

- (i) arising out of the ownership, maintenance, or use of any personal watercraft, including damages for care and loss of services because of bodily injury to or death of any person, or because of injury to or destruction of property including the loss of use of the property; or
  - (ii) on a settlement agreement.
- (5)
- (a) "Motorboat" has the same meaning as defined in Section 73-18-2.
  - (b) "Motorboat" includes personal watercraft regardless of the manufacturer listed horsepower.
  - (c) "Motorboat" does not include:
    - (i) a boat with a manufacturer listed horsepower of 50 horsepower or less; or
    - (ii) an airboat.
- (6) "Nonresident" means any person who is not a resident of Utah.
- (7) "Operator" means the person who is in control of a motorboat while it is in use.
- (8)
- (a) "Owner" means a person, other than a lien holder, holding a proprietary interest in or the title to a motorboat.
  - (b) "Owner" includes a person entitled to the use or possession of a motorboat subject to an interest by another person, reserved or created by agreement and securing payment or performance of an obligation.
  - (c) "Owner" does not include a lessee under a lease not intended as security.
- (9) "Owner's or operator's security," "owner's security," or "operator's security" means any of the following:
- (a) an insurance policy or combination of policies conforming to Sections 31A-22-1502 and 31A-22-1503, which is issued by an insurer authorized to do business in Utah;
  - (b) a surety bond issued by an insurer authorized to do a surety business in Utah in which the surety is subject to the minimum coverage limits and other requirements of policies conforming to Sections 31A-22-1502 and 31A-22-1503, which names the division as a creditor under the bond for the use of persons entitled to the proceeds of the bond;
  - (c) a deposit with the state treasurer of cash or securities complying with Section 73-18c-305;
  - (d) a certificate of self-funded coverage issued under Section 73-18c-306; or
  - (e) a policy conforming to Sections 31A-22-1502 and 31A-22-1503 issued by the Risk Management Fund created in Section 63A-4-201.
- (10) "Personal watercraft" has the same meaning as provided in Section 73-18-2.
- (11) "Registration" means the issuance of the registration cards and decals issued under the laws of Utah pertaining to the registration of motorboats.
- (12) "Registration materials" means the evidences of motorboat registration, including all registration cards and decals.
- (13) "Self-insurance" has the same meaning as provided in Section 31A-1-301.
- (14) "Waters of the state" means any waters within the territorial limits of this state.

Amended by Chapter 113, 2007 General Session

**73-18c-103 Liability not limited to face amount of owner's security.**

- (1) If a person maintains owner's security under this chapter, it does not limit the person's liability to the face amount of the owner's security.
- (2) Nothing in this chapter prevents the plaintiff in any action at law from relying for relief upon other processes provided by law.

Enacted by Chapter 348, 1997 General Session

## **Part 2 Administration**

### **73-18c-201 Division to administer and enforce chapter -- Board may adopt rules.**

- (1) The division shall administer and enforce the provisions of this chapter.
- (2) The board may adopt rules as necessary for the administration of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 382, 2008 General Session

## **Part 3 Owner's or Operator's Security Requirement**

### **73-18c-301 Requirement of owner's or operator's security.**

- (1) Each resident owner of a motorboat shall maintain owner's or operator's security in effect at any time that the motorboat is operated on waters of the state.
- (2) Each nonresident owner of a motorboat that has been physically present in this state for 90 or fewer days during the preceding 365 days shall maintain the type and amount of owner's or operator's security required in his or her place of residence at any time the motorboat is operated on waters of the state.
- (3) Each nonresident owner of a motorboat that has been physically present in this state more than 90 days during the preceding 365 days shall thereafter maintain owner's or operator's security in effect at any time the motorboat is operated on waters of the state.
- (4) The state and each of its political subdivisions and their respective departments, institutions, or agencies shall maintain owner's or operator's security in effect at any time their personal watercraft are operated on waters of the state.
- (5) Any other state is considered a nonresident owner of its motorboat and is subject to Subsection (2) or (3).
- (6) The United States, any political subdivision of it, or any of its agencies may maintain owner's or operator's security in effect for their motorboats.

Amended by Chapter 211, 2006 General Session

### **73-18c-302 Operating motorboats without owner's or operator's security -- Penalty.**

- (1) Any owner of a motorboat on which owner's or operator's security is required under Section 73-18c-301, who operates the motorboat or permits it to be operated on waters of the state without owner's security being in effect is guilty of a class B misdemeanor.
- (2) Any other person who operates a motorboat upon waters of the state with the knowledge that the owner does not have owner's security in effect for the motorboat is also guilty of a class B misdemeanor, unless that person has in effect owner's or operator's security on a Utah-registered motorboat or its equivalent that covers the operation, by him or her, of the motorboat in question.

Amended by Chapter 211, 2006 General Session

**73-18c-303 Condition to obtaining registration.**

The owner of a motorboat required to maintain owner's security under Section 73-18c-301 shall be required to swear or affirm, in writing, that he or she has owner's security in effect at the time of registering the motorboat.

Amended by Chapter 211, 2006 General Session

**73-18c-304 Evidence of owner's or operator's security to be carried when operating motorboat -- Defense -- Penalties.**

- (1)
  - (a)
    - (i) Except as provided in Subsection (1)(a)(ii), a person operating a motorboat shall:
      - (A) have in the person's immediate possession evidence of owner's or operator's security for the motorboat the person is operating; and
      - (B) display it upon demand of a peace officer.
    - (ii) A person operating a government-owned or government-leased motorboat is exempt from the requirements of Subsection (1)(a)(i).
  - (b) Evidence of owner's or operator's security includes any one of the following:
    - (i) the operator's:
      - (A) insurance policy;
      - (B) binder notice;
      - (C) renewal notice; or
      - (D) card issued by an insurance company as evidence of insurance;
    - (ii) a copy of a surety bond, certified by the surety, which conforms to Section 73-18c-102;
    - (iii) a certificate of the state treasurer issued under Section 73-18c-305; or
    - (iv) a certificate of self-funded coverage issued under Section 73-18c-306.
- (2) It is an affirmative defense to a charge under this section that the person had owner's or operator's security in effect for the motorboat the person was operating at the time of the person's citation or arrest.
- (3)
  - (a) A letter from an insurance producer or company verifying that the person had the required liability insurance coverage on the date specified is considered proof of owner's or operator's security for purposes of Subsection (2).
  - (b) The court considering a citation issued under this section shall allow the letter under Subsection (3)(a) and a copy of the citation to be faxed or mailed to the clerk of the court to satisfy Subsection (2).
- (4) A violation of this section is a class B misdemeanor.
- (5) If a person is convicted of a violation of this section and if the person is the owner of a motorboat, the court shall:
  - (a) require the person to surrender the person's registration materials to the court; and
  - (b) forward the registration materials, together with a copy of the conviction, to the division.
- (6)
  - (a) Upon receiving notification from a court of a conviction for a violation of this section, the division shall revoke the person's motorboat registration.
  - (b) Any registration revoked shall be renewed in accordance with Section 73-18-7.

Amended by Chapter 386, 2011 General Session

**73-18c-305 State treasurer's certificate to satisfy owner's or operator's security requirement.**

- (1) A certificate of the state treasurer that conforms to this section satisfies the owner's or operator's security requirement of Section 73-18c-301.
- (2) The certificate of the state treasurer shall certify that the person named in it has deposited in trust with the state treasurer cash in an amount equal to twice the single limit under Subsection 31A-22-1503(2) or securities with a fair market value of a similar amount, which securities are legal investments for insurers under Section 31A-18-105. The state treasurer may not accept a deposit and issue a certificate for it, unless the deposit is accompanied by evidence that there are no unsatisfied liens of any character on the assets deposited.
- (3) The deposit shall be held by the state treasurer in trust to satisfy any execution on a judgment that would be paid under an insurance policy conforming to Sections 31A-22-1502 and 31A-22-1503 had the treasurer issued such a policy.
- (4) Except as provided under Subsection (3), assets deposited with the treasurer under this chapter are exempt from attachment or execution.

Enacted by Chapter 348, 1997 General Session

**73-18c-306 Certificate of self-funded coverage as proof of owner's or operator's security.**

- (1) The division may, upon the application of any person, issue a certificate of self-funded coverage when it is satisfied that the person has:
  - (a) more than 24 motorboats; and
  - (b) on deposit, in a form approved by the division, cash or securities in an amount of \$200,000 plus \$100 for each motorboat up to and including 1,000 motorboats and \$50 for each motorboat over 1,000 motorboats.
- (2) Persons holding a certificate of self-funded coverage under this chapter shall pay benefits to persons injured from the self-funded person's operation, maintenance, and use of motorboats as would an insurer issuing a policy to the self-funded person containing the coverages under Sections 31A-22-1502 and 31A-22-1503.
- (3) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division may, upon reasonable grounds, cancel the certificate. Failure to pay any judgment up to the limit under Subsection 31A-22-1503(2) within 30 days after the judgment is final is a reasonable ground to cancel the certificate.
- (4) Any government entity with self-funded coverage for government-owned motorboats under Title 63G, Chapter 7, Governmental Immunity Act of Utah, meets the requirements of this section.

Amended by Chapter 382, 2008 General Session

**73-18c-307 Claims adjustment by persons with owner's or operator's security other than insurance.**

- (1) An owner or operator of a motorboat who maintains owner's or operator's security by a means other than an insurance policy under Section 73-18c-102, shall refer all bodily injury claims against the owner's or operator's security to an independent adjuster licensed under Title 31A, Chapter 26, Insurance Adjusters, or to an attorney.
- (2) Unless otherwise provided by contract, any motorboat claim adjustment expense incurred by a person maintaining owner's or operator's security by a means other than an insurance policy under Section 73-18c-102, shall be paid by the person who maintains this type of owner's or operator's security.



- (3) Owners and operators of motorboats maintaining owner's or operator's security by a means other than an insurance policy under Section 73-18c-102 are subject to the claim adjustment provisions of Title 31A, Chapter 26, Part 3, Claim Practices, in connection with claims against persons which arise out of the ownership, maintenance, or use of a motorboat.

Amended by Chapter 211, 2006 General Session

**73-18c-308 Providing false evidence of owner's or operator's security -- Penalty.**

- (1) A person who provides evidence of owner's or operator's security to a peace officer under Section 73-18-13.5 or 73-18c-304 knowing or having reason to believe that the evidence of owner's or operator's security is false or that it is evidence of owner's or operator's security that is not in effect is guilty of a class B misdemeanor.
- (2) A person is guilty of a class A misdemeanor if the person:
- (a) forges or, without authority, signs any evidence of proof of owner's or operator's security; or
  - (b) falsely swears or affirms when obtaining a registration under Section 73-18c-303.

Enacted by Chapter 348, 1997 General Session

## **Chapter 19**

### **Columbia Interstate Compact**

**73-19-6 Ratification.**

The Columbia Interstate Compact entered into at Portland, Oregon, on the 8th day of October, 1962, by the Columbia River Basin states, namely Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, by the representatives of those states with the approval of the representative of the United States of America is unconditionally ratified, approved and confirmed for and by the state of Utah.

Enacted by Chapter 177, 1963 General Session

**73-19-7 Text of compact.**

The text of said compact is as follows:

#### **ARTICLE I -- PURPOSES**

The purposes of this compact with respect to the land and water resources of the Columbia River Basin are:

A. To facilitate and promote their orderly, integrated and comprehensive development, use, conservation and control for various purposes.

B. To further intergovernmental co-operation and comity with respect to these resources and the programs for their use and development by, among other things,

(1) Providing for the relationship between certain beneficial uses of water as practicable means of effecting an equitable apportionment thereof, and for means of facilitating and effecting additional interstate agreements with respect thereto, and

(2) Providing an interstate body to consider the various common problems with respect to the use and development of these resources and to plan for, review and recommend plans for their development.

## ARTICLE II -- DEFINITION OF TERMS

As used in this compact:

- A. "Columbia River System" means the Columbia River and its tributaries within the United States.
- B. "Columbia River Basin" means all the drainage area of the Columbia River System within the United States.
- C. "State" or "member state" means a state which has ratified and is a party to this compact.
- D. "Upstream state" means any of the states of Idaho, Montana, Nevada, Utah or Wyoming.
- E. "Downstream state" means either of the states of Oregon or Washington.
- F. "Upstream area" means all the area of the states of Idaho, Montana, Nevada, Utah and Wyoming situated within the Columbia River Basin, and all those portions of the states of Oregon and Washington situated within the Columbia River Basin, lying east of the summit of the Cascade mountains.
- G. "Beneficial consumptive use" means any use of waters, recognized as a beneficial use under the law of the member state involved, resulting in a substantial amount of the water diverted being consumed or so used as not to return to the Columbia River System. Such uses include those for domestic, livestock and municipal purposes, irrigation of land and such industrial and other beneficial uses as involve consumptive use of the water diverted.
- H. "Nonconsumptive use" means any control or use of water in which, exclusive of seepage and evaporation of water incidental to its control or use, the water remains in or returns to the Columbia River System substantially undiminished in volume. Such uses include use for navigation, flood control, production of hydroelectric power, the maintenance of stream flows for pollution control, fish and wildlife and recreational purposes and such industrial and other beneficial uses as result in nonconsumptive use of the water involved.
- I. "Government" means, severally, the member states and the United States.
- J. "Commission" means the Columbia Compact Commission as authorized by this compact.

## ARTICLE III -- THE COLUMBIA COMPACT COMMISSION

- A. There is hereby created an agency of the member states, and of each of them, to be known as the Columbia Compact Commission. The commission shall be composed of three commissioners from each of the states of Idaho, Montana, Oregon and Washington, and, if they ratify the compact, two commissioners from Wyoming and one each from Nevada and Utah. The commissioners of the respective states shall be designated or appointed in accordance with the laws of the state which they represent and shall serve and be subject to removal in accordance with those laws. A commissioner shall be named to represent the United States, to be designated and to serve as provided by the laws of the United States.
- B. Each commissioner of a state shall be entitled to one vote in the commission. The commissioner of the United States shall serve as chairman of the Commission but shall have no vote. In the absence of any commissioner, his vote may be cast by another commissioner of his state or by another representative designated or appointed in accordance with the laws of that state if such other commissioner or representative shall have a written proxy in such form as may be established by rule of the commission.
- C. The requirements as to a quorum for the transaction of business at any meeting of the commission shall be as follows:
  - (1) Commencing with the date the compact becomes effective as to all seven states named in subdivision A of this article, the presence in person of twelve or more commissioners shall constitute a quorum for the transaction of business; such a quorum shall include at least two commissioners, in person, from such of the states of Idaho, Montana, Oregon and Washington

as have appointed or designated commissioners. For the duration of any called meeting of the commission the presence of a quorum shall be determined at the commencement of such meeting.

(2) If any duly called meeting is recessed because of a lack of a quorum initially, a reconvened meeting may be set by written notice, given in accordance with the bylaws, to all commissioners not less than ten days in advance of such reconvened meeting. At such reconvened meeting, the requirements for personal attendance by two commissioners from each of the states of Idaho, Montana, Oregon and Washington shall not apply, and the presence of twelve or more commissioners in person or by proxy shall constitute a quorum.

(3) Commencing with the date the compact becomes effective, but before all seven states have ratified, the requirements as to a quorum shall be modified as follows:

(a) If only four or five states have ratified, the phrase "nine or more" shall be substituted for the phrase "twelve or more" in subsections (1) and (2) of this section C.

(b) If only six states have ratified, the phrase "ten or more" shall be substituted for the phrase "twelve or more" in subsections (1) and (2) of this section C.

D. The requirements as to votes required to carry an action at any meeting of the commission shall be as follows:

(1) Commencing with the date the compact becomes effective as to all seven states named in section A of this article, any action by the commission shall be effective only if it be carried by a vote of twelve or more of the voting membership of the commission.

(2) Commencing with the date the compact becomes effective but before all seven states have ratified, the requirements as to votes necessary for commission action shall be modified as follows:

(a) If only four or five states have ratified the phrase "nine or more" shall be substituted for the phrase "twelve or more" in subsection (1) of this section D.

(b) If only six states have ratified, the phrase "ten or more" shall be substituted for the phrase "twelve or more" in subsection (1) of this section D.

E. The commission shall meet to establish its formal organization within ninety (90) days of the effective date of this compact, such meeting to be at the call of the chairman or by a majority of the commissioners then appointed or designated. The commission shall then adopt its initial set of bylaws providing for, among other things: the adoption of a seal, the management of its internal affairs and the authority and duties of its officers. The commission shall also then elect from among its members a vice-chairman and treasurer to serve for the first full or part annual term, these offices to be filled thereafter from among commission members by annual elections. The commission shall appoint an executive director, who shall also act as secretary, to serve at the pleasure of the commission and, at such compensation and under such terms and conditions as it may fix. The executive director shall be the custodian of the records of the commission with authority to affix the commission's official seal and to attest to and certify such records or copies thereof.

F. The executive director, subject to the approval of the commission in such cases as its bylaws may provide, shall, without regard to the provisions of the civil service laws of any member state or of the United States, appoint and remove or discharge such engineering, legal, expert, clerical and other personnel as may be necessary for the performance of the commission's functions, fix their compensation and define their duties, and require bonds of such of them as the commission may designate.

G. The commission may:

(1) Borrow, accept, or contract for the services of personnel from any government, agency thereof or any intergovernmental agency.

(2) Acquire by purchase or otherwise, hold and dispose of such real and personal property as may be necessary or convenient in the performance of its functions.

(3) Establish and maintain one or more offices for the transaction of its business.

H. The commission and its executive director shall make available to the member states or the United States any information in its possession at any time and shall provide free access to its records during established office hours to duly authorized representatives of member states or the United States or to any interested person.

I. The commission shall make and transmit annually to the legislative bodies and executive head of each government, a report covering the activities of the commission for the preceding year and embodying such plans, recommendations and findings as may have been adopted by the commission. The commission may issue such additional reports as it may deem desirable.

J. All meetings of the commission shall be open to the public.

#### ARTICLE IV -- FINANCE

A. The compensation and expenses of each commissioner shall be fixed and paid by the government which he represents. All other expenses incurred by the commission in the course of exercising the powers conferred upon it by this compact shall be paid by the commission out of its own funds.

B. The commission shall submit to the executive head or designated officer of each member state for presentation to its legislature a budget of its estimated expenditures. This budget shall contain specific recommendations of the amount to be appropriated by each of the member states. The time of submission and the fiscal period of the commission's budget shall conform as nearly as possible to the requirements of the laws of the member states.

C. The commission shall, at the initial organizational meeting after this compact becomes effective, or as soon thereafter as is practicable, establish the initial fiscal period and shall establish the budget of expenditures for this initial period. The budget for the initial period, if it be a full biennium, shall be not less than \$65,000. If the initial fiscal period is only a portion of a biennium, the minimum budget therefor shall be the proportion of \$65,000 derived by applying thereto the ratio that the initial period bears to a full biennium. The respective shares of the budget for the initial fiscal period shall be as follows:

Member State	Percent of Budget
Idaho	23.5
Montana	23.5
Nevada	2.0
Oregon	23.5
Utah	2.0
Washington	23.5
Wyoming	2.0

If any of the states of Nevada, Utah or Wyoming fail to ratify during the initial period, the total budget for that period shall be reduced by the amount of the share of the state failing so to ratify, but the amounts to be paid by the other states shall remain unchanged.

D. Subsequent budgets shall be recommended by the commission and the amounts shall be allocated among the member states. The shares of Idaho, Montana, Oregon and Washington shall be equal and in no event shall the share of Wyoming exceed 3%, the share of Nevada exceed 2% and the share of Utah exceed 1% of the total budget for any fiscal period.

E. The commission shall not pledge the credit of any government except by and with the authority of the legislative body thereof given pursuant to and in keeping with the constitution of said government. The commission shall not incur any obligations prior to the availability of funds adequate to meet the same.

F. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be open for examination or audit by any member state but the commission shall not be required to adopt the auditing or accounting procedures of any particular state. All receipts and disbursements of funds handled by the commission shall be audited yearly by an independent certified public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.

G. The accounts of the commission shall be open for public inspection during established office hours.

#### ARTICLE V -- GENERAL POWERS

The commission shall have power when authorized by such majority vote as provided by article III hereof:

A. To collect, correlate and report on data relating to present and potential uses of water and other related resources of the Columbia River Basin and relating to available sources of water for use in the Columbia River Basin; conduct investigations and surveys to determine the extent of those resources and the nature of the problems involved in their present and future development and management; and recommend plans and programs for their development.

B. To undertake itself, or in co-operation with governments or agencies thereof or other entities, with respect to the Columbia River Basin the review of all plans for the construction of works authorized or reauthorized to be undertaken after the effective date of this compact for flood control navigation, power development, irrigation, or other water use or management which involve facilities having capacity for the diversion or use of flows of more than 200 cubic feet per second or the capacity to store at any time more than 25,000 acre-feet of water and which are proposed to be undertaken pursuant to laws of the United States, whether under permission granted by the United States, by means of financing in whole or in part by the United States, or otherwise.

C. To appear and make recommendations before appropriate governmental or intergovernmental agencies or other entities in public hearings or otherwise, in connection with any plans, projects or programs.

D. To collect, correlate and publish water facts necessary for the purpose of this compact directly or in co-operation with any governmental or intergovernmental agencies or other entities.

E. To co-operate with the International Joint Commission-United States and Canada, the appropriate agencies of Canada and the Province of British Columbia, as well as with agencies of the member states and the United States and with other entities, in studies, plans and recommendations with respect to any project which may have a substantial effect on the uses of water of the Columbia River and its tributaries that are of international concern.

#### ARTICLE VI -- COOPERATION IN POWER DEVELOPMENT

The best interests of the region will be served by the co-operation of the member states in securing the development and construction of power projects in sufficient number and with sufficient capacity to meet the present and future energy requirements of the region, but no recommendation shall be made by the commission with respect to power allocations except by unanimous affirmative vote of all member states, anything in article III notwithstanding; provided, however, that any member state shall have the right acting independently through its officers or agencies to secure in connection with any project located wholly or partly within such state, such protections and reservations of power as such state may consider necessary to safeguard its present or future interests or power requirements.

## ARTICLE VII -- APPORTIONMENT OF WATER AND RELATED MATTERS

A. So far as the states are concerned, all waters of the Columbia River System shall be available for appropriation for beneficial purposes under and to the extent permitted by the laws of the states involved, but, except for the provisions in this subdivision A relating to certain relationships between consumptive and nonconsumptive uses, no apportionment of waters or determination of rights to the use thereof is made by this compact.

So far as the states are concerned, rights to beneficial consumptive uses of water within the upstream area, whether established heretofore or hereafter under the laws of the states involved, shall be recognized up to the average annual depletions shown in Plate 7 of the Report of the North Pacific Division, U.S. Army Engineers dated 1 June 1958, as against, and shall not be limited by, any rights, existing or future, to the quantity of such waters for nonconsumptive uses.

In the case of a stream situated wholly within a downstream state and tributary to the Snake River or to the Columbia River, however, the relationship as between nonconsumptive use rights appurtenant to a development located thereon and consumptive use rights as to the waters of such a tributary upstream from that development shall be governed by the laws of that state without regard to the foregoing limitations of this subdivision.

B. No waters of the Columbia River System shall be diverted out of the Columbia River Basin for use for any purpose except with the approval of all of the member states, but this provision shall not affect rights so to divert which are existing on the effective date of this compact.

C. The member states hereby designate, appoint and empower their commissioners to draft, negotiate and propose any and all compacts apportioning waters of any tributary stream forming part of the Columbia River System among or between the states through which said tributary stream flows, or amendments to this compact. Any such supplementary compacts or amendments to this compact negotiated as herein provided shall become effective upon approval by the commission, ratification by the legislatures of the member states party thereto, and consent thereto by the Congress.

D. All interstate compacts affecting the waters of the Columbia River System which are in effect as of the date this compact becomes operative shall remain unaffected hereby.

E. In the event this compact is terminated, any right to the beneficial consumptive use of water which, prior to the date of termination, is required to be recognized under the provisions of this compact shall continue to be recognized after such termination to the extent herein provided. Unless otherwise expressly provided in a supplemental compact, made pursuant to the provisions of subdivision C of this article, no such right required to be recognized as of the effective date of such supplement shall be impaired by such supplemental compact.

## ARTICLE VIII -- POLLUTION CONTROL

A. The states and the United States recognize that the rapid increase of the population of the Columbia River Basin and the growth of industrial, mining, and related activities within that area can lead to such pollution of the waters of the Columbia River System as might constitute a menace to the health and welfare of the people. The states and the United States further recognize that maintenance and improvement of the quality of the waters of the Columbia River System require co-operative action and that pollution abatement and control are essential to the proper realization of the objectives of this compact and to the safe, profitable, and efficient multi-purpose use of the waters of said Columbia River System.

B. In addition to the powers enumerated in article V, it shall be the duty of the commission and the commission shall have power:

(1) To engage in such investigations, analyses or other appropriate means as are deemed necessary to obtain, co-ordinate, tabulate and summarize technical and other data on the pollution of the waters of the Columbia River System or any portion thereof and on the character and

condition of such waters and the needs of the Columbia River Basin for improved water quality; and to prepare reports thereon at such times as may be deemed advisable by the commission.

(2) To co-operate with governments or agencies thereof or other entities for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of the waters of the Columbia River System or any portion thereof, and to make, revise and recommend to the governments water quality objectives necessary to protect the public health, public water supplies, propagation of fish and aquatic life and wildlife, recreational purposes, and agricultural, industrial and other uses.

(3) To disseminate to the public, by any and all appropriate means, information respecting pollution abatement and control in the waters of the Columbia River System or any portion thereof and on the harmful and uneconomic results of such pollution.

C. Each state shall have the primary obligation and responsibility to take appropriate action under its own laws to abate and control interstate pollution, which is defined as the deterioration of the quality of the waters of the Columbia River Basin within the boundaries of such state which materially and adversely affects beneficial uses of waters of the Columbia River Basin in other states. Upon complaint to the commission by the state water pollution control agency of one state that interstate pollution originating in another state or states is not being prevented or abated, the procedure shall be as follows:

(1) The commission shall call a hearing, giving not less than 30 days notice in writing thereof to the water pollution control agencies of the states involved and to each person or entity which the commission finds is charged with causing such interstate pollution.

(2) Such hearing shall be held in accordance with rules and regulations prescribed by the commission.

(3) At the conclusion of such hearing, the commission shall make a finding as to whether interstate pollution exists, and if so, shall recommend to the appropriate agency that action be taken under state or federal law to abate or correct such interstate pollution.

D. The water pollution control agencies of the member states shall from time to time, make available to the commission all data relating to the quality of the waters of the Columbia River Basin which they possess as the result of studies, surveys and investigations thereof which they may have made.

## ARTICLE IX -- FISH AND WILDLIFE, AND RECREATION

A. In the exercise of the powers and functions conferred on the commission, it shall be the policy of the commission to prepare and review plans for development and application of measures for preventing damage to and enhancing the fish and wildlife and recreational resources of the Columbia River Basin and to co-operate with all agencies charged with the responsibility for protecting and fostering these resources.

B. In the furtherance of this policy the commission shall:

(1) Submit pertinent information to, and receive recommendations from official agencies of the governments having jurisdiction or otherwise affected, with respect to projects and programs in which the commission may be concerned.

(2) Taking into consideration recommendations of governmental agencies responsible for fish and wildlife administration, recommend appropriate steps to assure that, in all projects which are within the purview of the commission, effective fish and wildlife protective facilities or compensatory measures as required by the laws of the member states, shall be incorporated into water use developments; that the costs thereof including operation and maintenance be included as a part of the cost of said projects; and that the responsibility for the provision of such effective fish and wildlife protective facilities or compensatory measures as are recommended as a part of the project plan shall continue beyond completion of construction of the individual projects. The fish

and wildlife facilities and compensatory measures referred to in this article may include physical installations located elsewhere than at the actual site of the project.

(3) In connection with projects coming within the purview of the commission, give proper recognition to recreational and fish and wildlife values by recommending such steps as may be necessary and practicable - to protect or develop recreational resources; to assure the maintenance of necessary minimum stream flows, reliable and adequate pool levels, and allocation of water for fish and wildlife protective or compensatory facilities, and for the regulation of such stream flows and pool levels so as to conform to sound fish and wildlife management practices.

#### ARTICLE X -- RULES AND REGULATIONS

The commission shall have the power to adopt and issue bylaws, rules and regulations to effectuate the purposes of this compact, as in its judgment may be appropriate. The commission shall publish its bylaws, rules and regulations in convenient form, but shall not be subject to the procedural requirements of any particular state.

#### ARTICLE XI -- EXISTING RIGHTS RECOGNIZED

Nothing in this compact shall be deemed:

(1) To impair or affect any rights, powers or jurisdiction of the United States, or those acting by or under its authority, in, over and to the waters of the Columbia River Basin, except as otherwise provided by the federal legislation required for the implementation of this compact.

(2) To affect the obligation of the United States to the Indians and Indian tribes, or any right owned or held by or for Indians or Indian tribes which is subject to the jurisdiction of the United States.

(3) To impair or affect the capacity of the United States, or those acting by or under its authority, to acquire in accordance with the laws of the state involved rights in and to use of waters of the Columbia River Basin.

(4) To subject any property of the United States, its agencies or instrumentalities, to taxation by any member state or subdivision thereof.

(5) To subject any property of the United States, its agencies or instrumentalities, to the laws of any member state to any extent other than the extent those laws would apply without regard to this compact, except as otherwise provided by the federal legislation required for the implementation of this compact.

(6) To affect the applicability of the laws of any member state with respect to water rights properly claimed thereunder, except to the extent that the applicability in a given case would be inconsistent with the provisions of this compact.

(7) To affect adversely the areas of Mount Rainier, Glacier, Yellowstone, or Grand Teton National Parks or Craters of the Moon, Fort Vancouver or Whitman National Monuments or to limit the operation of laws relating to the preservation thereof.

(8) To impair or affect marketing provisions for federally generated power as the same may be now or hereafter established.

#### ARTICLE XII -- TERMINATION

This compact shall remain in full force and effect unless and until terminated by action of the legislatures of the states of Idaho, Montana, Oregon and Washington which action is consented to and approved by the Congress of the United States; provided, that in the event of any termination all rights theretofore established hereunder or recognized hereby shall continue to be recognized as valid notwithstanding such termination.

#### ARTICLE XIII -- SEVERABILITY

The provisions of this compact shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any government or the applicability thereof to any government or agency thereof or other entity or to any circumstance



is held invalid, the validity of the remainder of this compact and the applicability thereof to any government or agency thereof or other entity or to any other circumstance shall not be affected thereby, unless it is authoritatively and finally determined judicially that the remaining provisions cannot operate for the purposes, or substantially in the manner, intended by the member states independently of the portions declared to be unconstitutional or invalid.

#### ARTICLE XIV -- RATIFICATION AND EFFECTIVE DATE

A. This compact shall become effective and binding when it has been ratified by the legislatures of the states of Idaho, Montana, Oregon and Washington, and when consented to by an Act of the Congress of the United States, which will, in substance, provide that the United States, or any agency thereof, or any non-federal entity acting under any future license or other authority granted under the laws of the United States, in connection with water control or use projects located wholly or partly in a downstream state shall be governed by the following limitation:

Rights to beneficial consumptive uses within the upstream area, whether established heretofore or hereafter under applicable laws, shall be recognized as against any rights, existing or future, to such waters for nonconsumptive uses by projects located wholly or partly within a downstream state, to the extent that average annual depletions resulting from such upstream consumptive uses above any property or authorized structure of the United States, located wholly or partly in downstream state, were assumed in Plate 10 of "Report of the Division Engineer" Volume I of House Document No. 531, 81st Congress, 2nd Session, and to the extent any additional depletions subsequently are recognized by the Congress as the basis of operation of existing projects, or as the basis for authorization of additional or revised projects.

B. If this compact becomes effective in accordance with the above provision, it shall also become effective and binding as to any of the states of Nevada, Utah or Wyoming if ratified by the legislature of any such state.

In Witness Whereof the commissioners have signed ten counterparts hereof each of which shall be and constitute an original, one of which shall be deposited with the administrator of general services of the United States of America, one of which shall be forwarded to the governor of each of the signatory states, and two of which shall be made a part of the permanent records of the Columbia Interstate Compact Commission.

Done at the City of Portland, Oregon, this 8th day of October, 1962.

For the State of Idaho:

(s) R. P. Parry	(s) Geo. N. Carter by
(s) G. L. Crookham, Jr.	Carl E. Tappin, Ass't.
	(s) Alex O. Coleman

For the State of Montana:

(s) Fred E. Buck	(s) Glenn H. Larson
(s) S. H. Raymond	(s) W. A. Groff
(s) Robert L. Neils	(s) Donovan Worden
(s) James E. Murphy	(s) John J. MacDonald
(s) Lester A. Colby	

For the State of Nevada:

(s) Elmo J. DeRicco	(s) Eyer H. Boies
(s) George B. Moseley	

For the State of Oregon:

(s) Freeman Holmer	(s) Harry D. Boivin
(s) George Layman	(s) Al Flegel
(s) Anthony Yturri	(s) Warne Nunn

(s) Vern L. Hill	(s) Edward J. Whelan
(s) John D. Hare	(s) Sidney Leiken
For the State of Utah:	
(s) Jay R. Bingham	
For the State of Washington:	
(s) D. Elwood Caples	(s) John L. Cooney
(s) William D. Shannon	(s) W. L. McCormick
(s) H. Maurice Ahlquist	
For the State of Wyoming:	
(s) E. J. Van Camp	(s) Ciril D. Cranney
(s) Earl Lloyd	(s) H. T. Person
(s) Clifford P. Hansen	(s) Norman B. Gray

I have participated in the negotiation of this compact. I intend to report favorably thereon to the Congress of the United States on the condition that the provisions of federal legislation giving the consent of Congress will meet the requirements of article XIV.

---

Thomas R. Newell, Representative  
of the United States of America

Enacted by Chapter 177, 1963 General Session

**73-19-8 Original compact -- Act as ratifying.**

The compact ratified by this act is the original signed by the commissioners representing the states of Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming and approved by the representative of the United States of America and deposited in the archives of the Department of State of the United States of America and with the Division of Archives of the state of Utah.

Amended by Chapter 67, 1984 General Session

**73-19-9 Utah representative on Columbia Compact Commission.**

The member of the Columbia Compact Commission to represent the state of Utah shall be the executive director of the Utah water and power board.

Enacted by Chapter 177, 1963 General Session

**73-19-10 Errors in copying not to invalidate ratification.**

Any errors, if any, in copying the original compact in Section 73-19-7 hereof shall be held not to invalidate the ratification of the compact in any manner whatsoever.

Enacted by Chapter 177, 1963 General Session

## **Chapter 20**

### **Emergency Water Resources**

**73-20-1 Purpose of act -- Legislative finding.**

It is the purpose of this act to provide financial assistance to commercial farmers and ranchers within the state who own or lease commercial farms or ranches and who are engaged primarily in the production of basic livestock herds in conjunction with such agricultural activity to enable them to provide adequate water supplies for the maintenance and preservation of such herds.

The Legislature finds that drought conditions in the state have resulted in a severe deterioration of range and pasture land which will have a detrimental effect upon the basic livestock industry within the state and upon the people of the state unless financial assistance for the purpose of developing emergency water resources to water basic livestock are made available to those in need.

Enacted by Chapter 6, 1977 Special Session 1

### **73-20-2 Definitions.**

As used in this act:

- (1) "Advisory board" means the Agricultural Advisory Board created by Section 4-2-7.
- (2) "Board" means the Board of Water Resources created by Section 73-10-1.5.
- (3) "Commercial farm" means a tract or tracts of land with or without improvements recognized as a farm or ranch in this state which is owned and operated or leased and operated by the applicant, and used in the production and raising of basic livestock.
- (4) "Farmer" means any person who owns and operates or leases and operates a commercial farm in this state, and includes individuals, partnerships and corporations.
- (5) "Basic livestock" means a herd of cattle, sheep, or swine kept and maintained primarily for breeding purposes.

Amended by Chapter 12, 1994 General Session

### **73-20-3 Authority of Board of Water Resources.**

The board is authorized to develop water resources and make such resources available to farmers and ranchers based upon demonstrated need from emergency funds appropriated and deposited in the emergency water resources construction account created pursuant to this act, for the exclusive purpose of developing and making water resources available to farmers and ranchers including, but not limited to, the development of springs, the drilling of wells, the installation of necessary water pipes, the construction of livestock watering storage ponds and the construction of livestock watering troughs or other watering facilities.

Enacted by Chapter 6, 1977 Special Session 1

### **73-20-4 Qualification for financial assistance.**

To qualify for financial assistance under this act the farmer shall:

- (1) make written original application to the advisory board and to the board on forms prescribed by the board in conjunction with the advisory board;
- (2) own or hold under lease a commercial farm which contributed more than one-half of the farmer's or rancher's gross income from all income sources for the taxable year 1976;
- (3) comply with any condition imposed by the board for financial assistance pursuant to authority granted the board under Section 73-20-3.

Enacted by Chapter 6, 1977 Special Session 1

**73-20-5 Consultation with Agricultural Advisory Board.**

The board, before making any expenditure of emergency funds appropriated under this act, shall consult with and receive the advice of the advisory board with respect to the demonstrated need for financial assistance in the form of the development of a water resource.

Enacted by Chapter 6, 1977 Special Session 1

**73-20-6 Payment for emergency water resource developments.**

The terms and conditions of payment for emergency water resource developments constructed pursuant to this act shall be set forth in a written contract prepared by the Division of Water Resources under the direction of the board and shall be executed by the farmer or rancher benefited. The substantive terms and conditions for payment shall be specified in the sole discretion of the board and shall appear in such contract. Title to any emergency water resource constructed under this act shall remain in the Division of Water Resources until the actual cost of the project is paid for in full by the benefited farmer or rancher.

Enacted by Chapter 6, 1977 Special Session 1

**73-20-7 Feasibility study required before approval of assistance.**

Before approval of any application for financial assistance under this act, the board shall cause the division of water resources to conduct a feasibility study. Such cost-efficient study shall include all costs of acquisition and construction as well as costs incurred for preliminary planning, engineering, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, and any other action necessary for the construction or improvement of the proposed water resource. The board may assess reasonable charges to a farmer or rancher for the cost of a feasibility study.

Enacted by Chapter 6, 1977 Special Session 1

**73-20-8 Emergency Water Resources Account -- Creation -- Purpose.**

There is hereby created within the Water Resources Construction Fund an account to be known as the "Emergency Water Resources Account," the proceeds of which shall be used exclusively for the development of emergency water resources.

Amended by Chapter 169, 1988 General Session

**73-20-9 Emergency Water Resources Account -- Appropriation -- Purpose.**

There is hereby appropriated to the Emergency Water Resources Account from the General Fund, from otherwise unappropriated liquor control profits, the sum of \$2,000,000 to be expended exclusively for the construction or improvement of water resources for eligible farmers or ranchers.

Enacted by Chapter 6, 1977 Special Session 1

**73-20-10 Proceeds deposited to Water Resources Construction Fund.**

The proceeds from the payment for emergency water resources from farmers and ranchers shall be deposited to the Water Resources Construction Fund for use in accordance with the purposes of such fund.

Amended by Chapter 169, 1988 General Session

**73-20-11 Transfer of funds -- Purposes.**

- (1) On the effective date of this act \$1,500,000 shall be transferred from the Emergency Water Resources Account created under Section 73-20-8 and initially funded under Section 73-20-9 to the water and power board construction fund proper.
- (2) The balance remaining in the Emergency Water Resources Account after the transfer authorized by Subsection (1) of this section may be used for all purposes provided for under Title 73, Chapter 20, Emergency Water Resources through December 31, 1978. Any amount in this account then remaining uncommitted shall be transferred immediately to the water and power board construction fund proper.
- (3) Any amounts so transferred under Subsection (1) or (2) of this section shall be substantially used initially for agriculturally-related projects.

Enacted by Chapter 37, 1978 General Session

**Chapter 21**  
**Ute Indian Water Compact**

**73-21-1 Approval of Ute Indian Water Compact.**

The within Compact, the Ute Indian Water Compact, providing for the execution by the State of Utah, the Ute Indian Tribe of the Uintah and Ouray Reservations, Utah, and the United States of America, through their various representatives, is hereby authorized, confirmed, and approved for the State of Utah.

Enacted by Chapter 74, 1980 General Session

**73-21-2 Text.**

The text of the Ute Indian Water Compact is as follows:

**UTE INDIAN WATER COMPACT**

The State of Utah, the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, and the United States of America, acting through their respective representatives agree to a Ute Indian Water Compact as follows:

**ARTICLE I**

**Purpose of Compact**

The purpose of this Compact is to remove the causes of present and future controversy over the quantification, distribution, and use of all waters claimed by or through the Ute Indian Tribe.

**ARTICLE II**

**Legal Basis for Compact**

This Compact is made in accordance with the Constitution and Laws of the United States, the State of Utah, and the Ute Indian Tribe.

**ARTICLE III**

**Water**

There is hereby apportioned, confirmed, and recognized from the waters apportioned to the State of Utah from the Colorado River System to the United States of America in perpetuity, in trust, for the Ute Indian Tribe and others, the depletion of water in the amount of 248,943 acre-feet

per annum, and the related gross diversion requirement of 471,035 acre-feet per annum, from all sources in accordance with and as more fully set out in the "Tabulation of Ute Indian Water Rights" attached hereto and on file with the Utah State Engineer. The priority date of October 3, 1861, is recognized for land groups 1 through 5, except for water supplied from storage in the Central Utah Project, and the priority date of January 5, 1882, is recognized for land groups 6 and 7, unless indicated otherwise in the Tabulation. Tables 1, 2, and 3 of the Tabulation list the total irrigable acreage, maximum allowable depletions and diversion requirements, respectively, for each of the land groups by stream. No water rights held in trust can be transferred from the lands listed in said groups without approval of the Secretary of the Interior. All water delivered to groups 1 and 5 lands from storage under the Central Utah Project shall be assigned the priority date of the Water and Power Resources Service filing to accomplish the equitable allocation of water to all subscribers of the Project.

In addition to the water allocated under the previous paragraph, there is hereby apportioned, confirmed, and recognized to the United States of America in perpetuity, in trust, for the Ute Indian Tribe the depletion of 10,000 acre-feet of water annually having a priority date of October 3, 1861, for municipal and industrial purposes, which shall be diverted from the Green River. To the extent that the Tribe or its members use reserved water for domestic, municipal, industrial, or related uses, the quantity so used shall be included within said 10,000 acre-feet unless a transfer of water from land listed in the Tabulation is properly made.

No water allocated pursuant to this Compact shall be subject to loss or forfeiture under the laws of the State of Utah or otherwise. Further, the water allocated herein shall not be restricted to any particular use, but may be used for any purpose selected by the Tribe in accordance with the procedures provided for in this agreement.

The quantities of water apportioned hereby include all water rights of every nature and description derived from the reserved water rights doctrine, from all sources of water, both surface and underground, and includes all types and kinds of uses, whether municipal, industrial, recreational, in-stream uses, sale, lease, or any other use whatsoever, and encompasses all claims asserted by or through the Ute Indian Tribe, and all persons and entities other than the Tribe whose claims or rights are derived, directly or indirectly, from the reserved water rights of the Tribe. Thus, any water rights adjudicated or otherwise established in the future on behalf of any person or entity and based upon a claim, directly or indirectly, through any reserved water rights of the Tribe shall be included within and as a part of the water quantified by this Compact. Any state water rights acquired by the Tribe for land to which a reserved right is recognized herein shall be forfeited.

Included within the practicably irrigable acreages recognized are (1) tribal lands and individual Indian allotments; (2) Uintah Indian Irrigation Project lands, which include tribal lands, allotments, and some private lands which were originally allotted lands; and (3) some few lands distributed to former tribal members terminated in accordance with the Ute Partition Act, approved August 27, 1954, P.L. 83-671, 68 Stat. 868, 25 U.S.C. Sections 677-677aa. Nothing in this Compact shall enlarge or diminish the scope of or otherwise affect either the United States' trust responsibility or the Ute Indian Tribe's responsibility to those persons who have been designated as mixed-bloods under the Act of August 27, 1954 (68 Stat. 868). The total acreage under irrigation or susceptible to sustained production of agricultural crops by means of irrigation is recognized as 129,201 acres, reduced by 7% to 120,157 acres to reflect roads, yards, fences, rights-of-way, and other non-productive lands. All lands in the Uintah Indian Irrigation Project are designated assessible or non-assessible. The Secretary of the Interior is authorized to change the designation from one to the other.

Nothing contained herein shall be construed to preclude the United States as Trustee for the Ute Indian Tribe, the Ute Indian Tribe, or any of its members from filing application with the Utah State Engineer for the appropriation of additional water under the laws of the State of Utah.

The diversion and depletion requirements for the water rights apportioned under this Compact are set forth in Tables 1, 2, and 3 of the Tabulation, consisting of acreage, diversion, and depletion schedules. The delivery schedules set forth in Tables 4, 5, 6, and 7 of the Tabulation shall determine the distribution of the water allocated hereunder. The Utah State Engineer, in a manner consistent with the agreements and covenants contained herein, shall have general administrative supervision of all surface and ground waters apportioned to the United States in trust for the Ute Indian Tribe and others, including measurement, apportionment, and distribution thereof, to the points of diversion from the main sources. The United States and the Tribe shall have general administrative supervision of all water apportioned to the United States, including measurement, apportionment, and distribution thereof, within the canal distribution systems from the various points of river diversion.

The United States on behalf of the Tribe, or the Tribe shall comply with the provisions of Section 73-3-3, Utah Code Annotated 1953, with regard to any change in the point of diversion, place, or nature of use; except that neither the United States nor the Tribe need make application to the State Engineer for change of place of use when the new place of use is within the same canal system.

The Parties agree to use their best efforts in the expeditious planning and development of water projects for all group 5 lands, or substitute lands, including the Uintah and Upalco Units, the Leland Bench Project, or other similar projects of the Central Utah Project.

This Article is not intended to relieve the responsibility of the parties involved in the Midview Exchange Agreement and the Agreement dated the 20th day of September, 1965, among the United States of America, the Ute Indian Tribe of the Uintah and Ouray Reservation, and the Central Utah Water Conservancy District. The provisions of said Agreement of September 20, 1965, shall remain binding upon the parties thereto and continue in full force and effect.

#### ARTICLE IV

##### Enforcement

For purposes of compelling compliance with the terms of this Compact, each party waives the defense of sovereign immunity as to actions brought by any other party, including any defense under the Eleventh Amendment to the United States Constitution. The United States District Court for the District of Utah is hereby granted jurisdiction to adjudicate any claim made by a party to this Compact that any other party, or its officials, are acting to impair or violate any right or privilege in this Compact.

#### ARTICLE V

##### Ratification and Amendment

Each party acknowledges that in order for this Compact to constitute a final and permanent settlement of tribal reserved water rights, this Compact must be ratified by the United States, the State of Utah, and the Ute Indian Tribe through referendum of the Tribe's membership. The parties shall use their best efforts to have the ratifications undertaken as expeditiously as possible. The parties hereto agree that the terms of this Compact have the force and effect of law and agree to adopt all statutes, regulations and ordinances that are, or may be, necessary to harmonize existing statutes, regulations and ordinances with this Compact, and agree that this Compact may be included within any general stream adjudication. The Secretary of the Interior is authorized to implement this Compact by appropriate regulations.

DATED: \_\_\_\_\_

UTE INDIAN TRIBE

By \_\_\_\_\_  
STATE OF UTAH  
By \_\_\_\_\_  
UNITED STATES OF AMERICA  
By \_\_\_\_\_

Amended by Chapter 20, 1995 General Session

## **Chapter 22**

### **Utah Geothermal Resource Conservation Act**

#### **73-22-1 Short title.**

This chapter shall be known and may be cited as the "Utah Geothermal Resource Conservation Act."

Enacted by Chapter 188, 1981 General Session

#### **73-22-2 Legislative findings.**

It is declared to be in the public interest to foster, encourage, and promote the discovery, development, production, utilization, and disposal of geothermal resources in the State of Utah in such manner as will prevent waste, protect correlative rights, and safeguard the natural environment and the public welfare; to authorize, encourage, and provide for the development and operation of geothermal resource properties in such manner that the maximum ultimate economic recovery of geothermal resources may be obtained through, among other things, agreements for cooperative development, production, injection, and pressure maintenance operations.

Enacted by Chapter 188, 1981 General Session

#### **73-22-3 Definitions.**

As used in this chapter:

- (1) "Correlative rights" mean the rights of each geothermal owner in a geothermal area to produce without waste his just and equitable share of the geothermal resource underlying the geothermal area.
- (2) "Division" means the Division of Water Rights, Department of Natural Resources.
- (3) "Geothermal area" means the general land area which is underlain or reasonably appears to be underlain by geothermal resources.
- (4) "Geothermal fluid" means water and steam at temperatures greater than 120 degrees centigrade naturally present in a geothermal system.
- (5) "Geothermal resource" means: (a) the natural heat of the earth at temperatures greater than 120 degrees centigrade; and (b) the energy, in whatever form, including pressure, present in, resulting from, created by, or which may be extracted from that natural heat, directly or through a material medium. Geothermal resource does not include geothermal fluids.
- (6) "Geothermal system" means any strata, pool, reservoir, or other geologic formation containing geothermal resources.
- (7) "Material medium" means geothermal fluids, or water and other substances artificially introduced into a geothermal system to serve as a heat transfer medium.



- (8) "Operator" means any person drilling, maintaining, operating, producing, or in control of any well.
- (9) "Owner" means a person who has the right to drill into, produce, and make use of the geothermal resource.
- (10) "Person" means any individual, business entity (corporate or otherwise), or political subdivision of this or any other state.
- (11) "Waste" means any inefficient, excessive, or improper production, use, or dissipation of geothermal resources. Wasteful practices include, but are not limited to: (a) transporting or storage methods that cause or tend to cause unnecessary surface loss of geothermal resources; or (b) locating, spacing, constructing, equipping, operating, producing, or venting of any well in a manner that results or tends to result in unnecessary surface loss or in reducing the ultimate economic recovery of geothermal resources.
- (12) "Well" means any well drilled, converted, or reactivated for the discovery, testing, production, or subsurface injection of geothermal resources.

Enacted by Chapter 188, 1981 General Session

**73-22-4 Ownership of geothermal resource -- Lands subject to chapter.**

- (1) Ownership of a geothermal resource derives from an interest in land and not from an appropriative right to geothermal fluids.
- (2) This chapter shall apply to all lands in the State of Utah, including federal and Indian lands to the extent allowed by law. When these lands are committed to a unit agreement involving lands subject to federal or Indian jurisdiction, the division may, with respect to the unit agreement, deem this chapter complied with if the unit operations are regulated by the United States and the division finds that conservation of geothermal resources and prevention of waste are accomplished under the unit agreement.

Enacted by Chapter 188, 1981 General Session

**73-22-5 Jurisdiction of division -- Hearings -- Subpoena power -- Restraining violations -- Actions for damages against violators unaffected.**

- (1) The division has jurisdiction and authority over all persons and property, public and private, necessary to enforce the provisions of this chapter and may enact, issue, and enforce necessary rules and orders to carry out the requirements of this chapter.
- (2)
  - (a) Any affected person may apply for a hearing before the division, or the division may initiate proceedings upon any question relating to the administration of this chapter by following the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act.
  - (b) The Division of Water Rights shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.
- (3) The division shall have the power to summon witnesses, to administer oaths, and to require the production of records, books, and documents for examination at any hearing or investigation conducted by it.
- (4)
  - (a) If any person fails or refuses to comply with a subpoena issued by the division, or if any witness fails or refuses to testify about any matter regarding which the witness may be interrogated, the division may petition any district court in the state to issue an order compelling the person to:

- (i) comply with the subpoena and attend before the division;
    - (ii) produce any records, books, and documents covered by the subpoena; or
    - (iii) to give testimony.
  - (b) The court may punish failure to comply with the order as contempt.
- (5)
- (a) Whenever it appears that any person is violating or threatening to violate any provision of this chapter, or any rule or order made under this chapter, the division may file suit in the name of the state to restrain that person from continuing the violation or from carrying out the threat of violation.
  - (b) Venue for the action is in the district court in the county where any defendant resides or in the county where the violation is alleged to have occurred.
- (6)
- (a) Nothing in this chapter, no suit by or against the division, and no violation charged or asserted against any person under this chapter, or any rule or order issued under it, shall impair, abridge, or delay any cause of action for damages that any person may have or assert against any person violating this chapter, or any rule or order issued under it.
  - (b) Any person so damaged by the violation may sue for and recover whatever damages that the person is otherwise entitled to receive.

Amended by Chapter 382, 2008 General Session

**73-22-6 Information required concerning resource development -- Confidentiality -- Regulation of wells -- Surety bonds -- Inspection.**

- (1) The division shall have authority to require:
- (a) Identification of the location and ownership of all wells and producing geothermal leases.
  - (b) Filing with the division of a notice of intent to drill, redrill, deepen, permanently alter the casing of, or abandon any well. Approval of the notice of intent must be obtained from the division prior to commencement of operations.
  - (c) Keeping of well logs and filing true and correct copies with the division. These records are public records when filed with the division, unless the owner or operator requests, in writing, that the records be held confidential. The period of confidentiality shall be established by the division, not to exceed five years from the date of production or injection for other than testing purposes or five years from the date of abandonment, whichever occurs first, as determined by the division. Well records held confidential by the division are open to inspection by those persons authorized in writing by the owner or operator. Confidential status shall not restrict inspection by state officers charged with regulating well operations or by authorized officials of the Utah State Tax Commission for purposes of tax assessment.
  - (d) The spacing, drilling, casing, testing, operating, producing, and abandonment of wells so as to prevent:
    - (i) geothermal resources, water, gases, or other fluids from escaping into strata other than the strata in which they are found (unless in accordance with a subsurface injection program approved by the division);
    - (ii) pollution of surface and groundwater;
    - (iii) premature cooling of any geothermal system by water encroachment or otherwise which tends to reduce the ultimate economic recovery of the geothermal resources;
    - (iv) blowouts, cave-ins, and seepage; and
    - (v) unreasonable disturbance or injury to neighboring properties, prior water rights, human life, health, and the environment.

- (e) The operator to file cash or individual surety bonds with the division for each new well drilled and each abandoned well redrilled. The amount of surety required shall be determined by the division. In lieu of bonds for separate wells, the operator may file a blanket cash or individual surety bond in an amount set by the division to cover all the operator's drilling, redrilling, deepening, maintenance, or abandonment activities for wells in the state. Bonds filed with the division shall be executed by the operator, as principal, conditioned on compliance with division regulations in drilling, redrilling, deepening, maintaining, or abandoning any well or wells covered by the bond and shall secure the state against all losses, charges, and expenses incurred by it to obtain such compliance by the principal named in the bond.
- (f) The geothermal owner or operator to measure geothermal production according to standards set by the division and maintain complete and accurate production records. The records, or certified copies of them, shall be preserved on file by the owner or operator for a period of five years and shall be available for examination by the division at all reasonable times.
- (g) Filing with the division any other reasonable reports which it prescribes regarding geothermal operations within the state.
- (2) Any bond filed with the division in conformance with this chapter may, with the consent of the division, be terminated and canceled and the surety be relieved of all obligations under it when the well or wells covered by the bond have been properly abandoned or another valid bond has been substituted for it.
- (3) The division may enter onto private or public land at any time to inspect any well or geothermal resource development project to determine if the well or project is being constructed, operated, or maintained according to any applicable permits or to determine if the construction, operation, or maintenance of the well or project may involve an unreasonable risk to life, health, property, the environment or subsurface, surface, or atmospheric resources.

Enacted by Chapter 188, 1981 General Session

**73-22-7 Cooperative or unit operation of geothermal area -- Order -- Plan of operation -- Approval of owners -- Amendment.**

- (1) The agency or any affected person may commence an adjudicative proceeding to consider the need for cooperative or unit operation of a geothermal area.
- (2) The division shall order the cooperative or unit operation of part or all of a geothermal area if the division finds that:
  - (a) a developable resource exists; and
  - (b) that this operation is reasonably necessary to prevent waste, to protect correlative rights, or to prevent the drilling of unnecessary wells and will not reduce the ultimate economic recovery of geothermal resources.
- (3) The division's order for cooperative or unit operations shall be upon terms and conditions that are just and reasonable and satisfy the requirements of Subsection (2).
- (4) An order by the division for unit operations shall prescribe a plan, including:
  - (a) a description of the geothermal area to be unit operated, termed the unit area;
  - (b) a statement of the nature of the operations contemplated, the time they will commence, and the manner and circumstances under which unit operations shall terminate;
  - (c) an allocation to the separately-owned tracts in the unit area of the geothermal resources produced and of the costs incurred in unit operations. The allocations shall be in accord with the agreement, if any, of the affected parties. If there is no agreement, the division shall determine the allocations from evidence introduced at a hearing before the division. Production shall be allocated in proportion to the relative value that each tract bears to

the value of all tracts in the unit area. The acreage of each tract in proportion to the total unit acreage shall be the measure of relative value, unless the division finds after public hearing that another method is likely to result in a more equitable allocation and protection of correlative rights. Resource temperature, pressure, fluid quality, geological conditions, distance to place of use, and productivity are among the factors that may be considered in evaluating other methods. The method for allocating production in unit operations shall be revised, if, after a hearing, the division finds that the revised method is likely to result in a more equitable allocation and protection of correlative rights. Any affected person may file a request for agency action to consider adoption of a revised allocation method, but the request may not be made until three years after the initial order by the division or at less than two-year intervals after that. Upon receipt of a request for consideration of a revised allocation method, the division shall hold a hearing;

- (d) a provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investment in wells, tanks, pumps, machinery, materials, equipment, and other things and services of value attributable to the unit operations. The amount to be charged unit operations for each item shall be determined by the owners of the unit area (not including royalty owners). If the owners of the unit area are unable to agree upon the amount of the charges or to agree upon the correctness of the charges, any affected party may file a request for agency action. Upon receipt of the request, the division shall hold a hearing to determine them. The net amount charged against the owner of a separately-owned tract shall be considered an expense of unit operation chargeable against that tract. The adjustments provided for in this subsection may be treated separately and handled by agreements separate from the unitization agreement;
  - (e) a provision providing how the costs of unit operations, including capital investments, shall be determined and charged to the separately-owned tracts and how these costs shall be paid, including a provision providing when, how, and by whom the unit production allocated to an owner who does not pay the share of the cost of unit operation charged to that owner, or the interest of that owner, may be sold and the proceeds applied to the payment of the costs. The operator of the unit shall have a first and prior lien for costs incurred pursuant to the plan of unitization upon each owner's geothermal rights and his share of unitized production to secure the payment of the owner's proportionate part of the cost of developing and operating the unit area. This lien may be enforced in the same manner as provided by Title 38, Chapter 1a, Part 7, Enforcement of Preconstruction and Construction Liens. For these purposes any nonconsenting owner is considered to have contracted with the unit operator for his proportionate part of the cost of developing and operating the unit area. A transfer or conversion of any owner's interest or any portion of it, however accomplished, after the effective date of the order creating the unit, does not relieve the transferred interest of the operator's lien on the interest for the cost and expense of unit operations;
  - (f) a provision, if necessary, for carrying or otherwise financing any person who elects to be carried or otherwise financed, allowing a reasonable interest charge for this service payable out of that person's share of the production;
  - (g) a provision for the supervision and conduct of the unit operations, in respect to which each person shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of that person;
  - (h) any additional provisions that are necessary to carry on the unit operations.
- (5)

- (a) No order of the division providing for unit operations is effective unless and until the division finds that the plan for unit operations prescribed by the division has been approved in writing by:
    - (i) those persons, who under the division's order, will be required to pay 66% of the costs of the unit operation; and
    - (ii) the owners of 66% of the production or proceeds of the unit operation that are free of costs, such as royalties, overriding royalties, and production payments.
  - (b) If the persons owning the required percentage of interest in the unit area do not approve the plan within six months from the date on which the order is made, the order is ineffective and shall be revoked by the division unless for good cause shown the division extends this time.
- (6)
- (a) An order providing for unit operations may be amended by an order of the division in the same manner and subject to the same conditions as an original order for unit operations.
  - (b) If this amendment affects only the rights and interests of the owners, the approval of the amendment by the owners of royalty, overriding royalty, production payments, and other interests that are free of costs is required.
  - (c) Production allocation may be amended only by following the procedures of Subsection (4)(c).
- (7)
- (a) All operations, including the commencement, drilling, or operation of a well upon any portion of the unit area are considered for all purposes to be the conduct of those operations upon each separately-owned tract in the unit by the several owners of tracts in the unit.
  - (b) The portions of the unit production allocated to a separately-owned tract in a unit area are, when produced, considered for all purposes to have been actually produced from that tract by a well drilled on it. Good faith operations conducted pursuant to an order of the division providing for unit operations constitutes a complete defense to any suit alleging breach of lease or of contractual obligations covering lands in the unit area to the extent that compliance with these obligations cannot be had because of the order of the division.
- (8) The portion of the unit production allocated to any tract, and the proceeds from the sale of this production, are the property and income of the several persons to whom, or to whose credit, they are allocated or payable under the order providing for unit operations.
- (9)
- (a) Except to the extent that the parties affected so agree, and as provided in Subsection (4)(e), no order providing for unit operations may be construed to result in a transfer of all or any part of the title of any person to the geothermal resource rights in any tract in the unit area.
  - (b) All property, whether real or personal, that is acquired in the conduct of unit operations, is acquired for the account of the owners within the unit area and is the property of those owners in the proportion that the expenses of unit operations are charged.

Amended by Chapter 278, 2012 General Session

**73-22-8 Geothermal fluids as water resource -- Application for appropriation required -- Priorities.**

- (1) Geothermal fluids are deemed to be a special kind of underground water resource, related to and potentially affecting other water resources of the state. The utilization or distribution for their thermal content and subsurface injection or disposal of same shall constitute a beneficial use of the water resources of the state.
- (2)

- (a) Geothermal owners shall, prior to the commencement of, or increase in, production from a well or group of wells to be operated in concert, file an application with the division to appropriate such geothermal fluids as will be extracted from the well or group of wells. Publication of applications shall be made as provided in Section 73-3-6, and protests may be filed as provided in Section 73-3-7. The division shall approve an application if it finds that the applicant is a geothermal owner and that the proposed extraction of geothermal fluids will not impair existing rights to the waters of the state.
- (b) The division may grant the quantity of an application on a provisional basis, to be finalized upon stabilization of well production. Flow testing of a discovery well shall not require an application to appropriate geothermal fluids.
- (3) The date of an application to appropriate geothermal fluids, when approved by the division, shall be the priority date as between the geothermal owner and the owners of rights to water other than geothermal fluids. No priorities shall be created among geothermal owners by the approval of an application to appropriate geothermal fluids.

Enacted by Chapter 188, 1981 General Session

**73-22-9 Rights to geothermal resources.**

Rights to geothermal resources and to geothermal fluids to be extracted in the course of production of geothermal resources acquired under Section 73-22-8 shall be based on the principle of correlative rights.

Enacted by Chapter 188, 1981 General Session

**73-22-10 Judicial review of division actions -- Falsification or omission of filings as misdemeanor -- Limitation of actions.**

- (1)
  - (a) Any person aggrieved by any order issued under this chapter may obtain judicial review.
  - (b) Venue for judicial review of informal adjudicative proceedings is in the district court of Salt Lake County, or in the district court of the county in which the complaining person resides.
- (2) An action or appeal involving any provision of this chapter, or a rule or order issued under it shall be determined as expeditiously as possible.
- (3) Any person who, for the purpose of evading this chapter or any order of the division issued under it, makes or causes to be made any false entry in any report, record, account, or memorandum required by this chapter, or by any order issued under it, or omits or causes to be omitted from the report, record, account, or memorandum, full, true, and correct entries as required by this chapter, or by an order, or removes from this state or destroys, mutilates, alters, or falsifies the record, account, or memorandum, is guilty of a class A misdemeanor.
- (4) No suit, action, or other proceeding based upon a violation of this chapter or any order of the division issued under it may be begun or maintained unless the action is begun within two years from the date of the alleged violation.

Amended by Chapter 161, 1987 General Session

**Chapter 23**  
**West Desert Pumping Project**

**73-23-1 Legislative findings.**

- (1) The Legislature finds that the level of the Great Salt Lake has risen sharply in recent years due to extreme weather conditions. The high level of the lake has caused extraordinary flooding conditions resulting in substantial damage to public and private facilities. Those conditions pose a threat to life, health, and property, and in particular may result in extensive damage to public lands, major transportation routes, and other public facilities.
- (2) The Legislature finds that some of the existing and anticipated extraordinary flooding conditions can be alleviated by construction of the West Desert Pumping Project.
- (3) The Legislature declares it is in the public interest and a public purpose to construct the West Desert Pumping Project as a means of counteracting the threat to life, health, and property in general and to public lands, major transportation routes, and other public facilities in particular.
- (4) The Legislature finds that all activities engaged in under authority of this chapter are governmental functions and governmental entities and their officers and employees are immune from suit for any injury or damage resulting from those activities.

Enacted by Chapter 6, 1986 Special Session 2

**73-23-2 Appropriation -- Projects authorized.**

- (1) There is appropriated from the Water Resources Conservation and Development Fund \$30,000,000 to the following agencies for fiscal year 1985-86 to pay all or any portion of any of the following projects, including but not limited to:
  - (a) To the Division of Water Resources to pay for all or any portion of the West Desert Pumping Project, Bare Bones West Desert Pumping  
  
\$60,000,000
  - (b) To the Disaster Relief Board for allocation to the appropriate entities to pay for all or any portion of any diking or other flood damage or mitigation costs as determined by the board with the concurrence of the governor, including, but not limited to: implementing the finger diking project in Salt Lake County, raising the breakwaters around the Great Salt Lake Marina and diking the east side of the parking lot, raising the AMAX North dike to protect I-80, raising the American Salt Company dike, raising the South Davis WWTP - North Plant dikes, diking the Little Mountain WWTP, and diking the Corinne Sewage Lagoon  
  
\$10,000,000
  - (c) To the Division of Water Resources for preconstruction design studies for a state water plan for upstream water development  
  
\$500,000
  - (d) To the Division of Water Resources to pay for the engineering and design work for the interisland diking projects (diking from Antelope Island to Fremont Island and from Fremont Island to Promontory Point) by July 1, 1987.

\$1,200,000

- (2) All money provided under this chapter shall be nonlapsing and may be used for all acquisitions and construction costs, including, without exclusion or limitation, operation and maintenance, the cost of acquiring land, interests in land, easements and rights-of-way, the cost of improving sites, and of acquiring, constructing, equipping, and furnishing facilities and all structures, roads, utilities, and improvements necessary, incidental, or convenient to the facilities and all related engineering, architectural, and legal fees.

Enacted by Chapter 6, 1986 Special Session 2

### **73-23-3 Duties and powers of Division of Water Resources.**

For purposes of this chapter, the Division of Water Resources:

- (1) shall provide for the construction, operation, and maintenance of the West Desert Pumping Project;
- (2) may enter into agreements as necessary to provide for all or any portion of the West Desert Pumping Project, including any indemnification agreements required by the federal government;
- (3) may acquire land or any other property right by any lawful means, including eminent domain;
- (4) is exempt from Title 63G, Chapter 6a, Utah Procurement Code; and
- (5) may proceed without obtaining water right approval from the state engineer.

Amended by Chapter 347, 2012 General Session

### **73-23-4 Legislative findings.**

- (1) The Legislature finds that the West Desert Pumping Project was implemented as an emergency flood control project. The project was undertaken, specifically, to protect critical public facilities and, more generally, to abate an imminent threat to life, health, and property.
- (2) The Legislature finds that the level of the Great Salt Lake can be lowered by implementing a long-term program to develop waters upstream of the lake. A water development program will have other beneficial uses, including the provision of municipal and industrial water to meet the needs of the state's growing population.

Enacted by Chapter 232, 1988 General Session

### **73-23-5 Interim committee study responsibilities of Division of Water Resources.**

The Division of Water Resources shall:

- (1) evaluate the first year's operation of the West Desert Pumping Project;
- (2) define the operational range and limitations of the West Desert Pumping Project as an emergency flood control project;
- (3) assess the feasibility of developing a cooperative ownership, operation, and maintenance plan for the project with public and private entities;
- (4) identify long-term water development opportunities upstream of the Great Salt Lake; and
- (5) report their findings to the Energy, Natural Resources and Agriculture Interim Committee before October 1, 1988.

Enacted by Chapter 232, 1988 General Session

### **73-23-6 Use of certain remaining construction funds.**



The division may use up to \$25,000 of the remaining West Desert Pumping Project construction funds to conduct the activities specified in Section 73-23-5.

Enacted by Chapter 232, 1988 General Session

## **Chapter 26**

### **Bear River Development Act**

#### **73-26-101 Short title.**

This chapter is known as the "Bear River Development Act."

Enacted by Chapter 251, 1991 General Session

## **Part 1**

### **State to Develop the Bear River**

#### **73-26-102 Findings.**

- (1) The Legislature finds that:
  - (a) the Board of Water Resources has significant filings for water of the Bear River that could be developed;
  - (b) the continued growth and prosperity of communities in the Bear River Basin and the Wasatch Front will be enhanced by the development and utilization of the Bear River, one of the last major sources of developable water in the state; and
  - (c) Bear River water developed by the state should be apportioned in an equitable manner taking into consideration:
    - (i) the increasing water needs of the state's growing urban population; and
    - (ii) preservation of future supplies for areas:
      - (A) where the water originates; or
      - (B) that are adjacent to the water and can be conveniently supplied by it.
- (2) Therefore, it is the purpose of this chapter to:
  - (a) direct the Division of Water Resources to develop the surface waters of the Bear River and its tributaries covered by filings of the board, filings acquired from the Bureau of Reclamation, or new filings, as approved by the state engineer;
  - (b) allocate the developed waters among various regions and entities; and
  - (c) provide protection for existing rights.
- (3) Nothing in this chapter shall:
  - (a) cover groundwater; or
  - (b) be construed to prevent any person from developing:
    - (i) groundwater pursuant to state law; or
    - (ii) the surface waters of the Bear River or its tributaries at any site including sites studied by the state.

Enacted by Chapter 251, 1991 General Session

#### **73-26-103 Definitions.**

As used in this chapter:

- (1) "Board" means the Board of Water Resources.
- (2)
  - (a) "Construction costs" means all costs related to the development of a project, except the costs of environmental mitigation.
  - (b) Construction costs include:
    - (i) planning;
    - (ii) engineering and legal work;
    - (iii) permitting;
    - (iv) acquisition of land and rights-of-way;
    - (v) rebuilding and relocation of highways or other facilities affected by the project;
    - (vi) compensation for impairment of existing water rights;
    - (vii) construction of the dam, reservoir, and associated facilities; and
    - (viii) expenses of the division related to the project.
- (3) "Developed waters" means surface water developed by projects authorized under this chapter.
- (4) "Division" means the Division of Water Resources.
- (5) "Environmental mitigation costs" means costs that may be required by federal, state, or local governmental agencies for project environmental permitting, including:
  - (a) planning;
  - (b) environmental and engineering studies;
  - (c) permitting;
  - (d) acquisition of land and rights-of-way; and
  - (e) operation, maintenance, and repair of facilities associated with project environmental mitigation.
- (6) "Preconstruction costs" means any of the following costs incurred before project construction begins:
  - (a) planning;
  - (b) design;
  - (c) engineering studies;
  - (d) legal work;
  - (e) permitting;
  - (f) acquisition of land and rights-of-way;
  - (g) compensation for impairment of existing water rights;
  - (h) environmental studies; or
  - (i) any combination of Subsections (6)(a) through (h).
- (7) "Project costs" include preconstruction costs, construction costs, environmental mitigation costs, and costs of operation, maintenance, repair, and replacement.

Amended by Chapter 84, 2006 General Session

**73-26-104 Bear River development projects.**

- (1) The division shall:
  - (a) develop the surface waters of the Bear River and its tributaries through the planning and construction of reservoirs and associated facilities as authorized and funded by the Legislature;
  - (b) own and operate the facilities constructed; and
  - (c) market the developed waters.
- (2) Potential projects include:
  - (a) Hyrum Dam;

- (b) Avon;
  - (c) Mill Creek;
  - (d) Oneida Narrows;
  - (e) North Eden Creek;
  - (f) Washakie; and
  - (g) an interconnection from the Corinne area to Willard Reservoir.
- (3) The division may develop sites other than those listed in Subsection (2) if those projects are authorized and funded by the Legislature.
- (4) The purchase of real property does not constitute water development.

Amended by Chapter 84, 2006 General Session

**73-26-105 Transmission and treatment facilities.**

Entities purchasing developed water shall develop any facilities necessary for the transmission or treatment of the water.

Enacted by Chapter 251, 1991 General Session

**73-26-106 Participation of the federal government and other states.**

- (1) The division may allow the federal government or the states of Idaho or Wyoming to participate in a project authorized under this chapter for the purpose of developing their water rights.
- (2) Any participating entity shall pay for all project costs represented by its share of the project.

Enacted by Chapter 251, 1991 General Session

**73-26-107 Development of hydropower generating works -- Power offered to public utilities or municipalities.**

- (1) In association with a project authorized under this chapter, the division may:
- (a) construct and own hydroelectric generating works and incidental electrical facilities for the purposes stated in Subsection (2); or
  - (b) enter into an agreement with a public utility or municipality for the development and operation of hydroelectric generating works and incidental electrical facilities.
- (2) Power and energy derived from any hydroelectric generating works owned by the division, except for power and energy needed for project operations, must be offered to public utilities or municipalities in the state for distribution to electric consumers.

Enacted by Chapter 251, 1991 General Session

## **Part 2**

### **Allocation of Developed Waters**

**73-26-201 Entities eligible to receive developed water -- Leasing developed water -- Use of developed water.**

- (1) Water developed by projects authorized under this chapter, except water reserved for wildlife or public recreation, shall be made available by contract exclusively to the following entities:
- (a) the Bear River Water Conservancy District;

- (b) the Salt Lake County Water Conservancy District;
  - (c) the Weber Basin Water Conservancy District; and
  - (d) Cache County and any water conservancy district in Cache County.
- (2) A county or conservancy district that purchases or leases developed water may lease the water to any person.
- (3) A county or conservancy district that purchases or leases developed water may use the water directly or by exchange in accordance with Section 73-3-20.

Amended by Chapter 84, 2006 General Session

**73-26-202 Limits on amount of water available to any entity -- Exception.**

- (1) Except as provided in Subsection (2), the total amount of water from projects authorized under this chapter that may be made available to any entity or area is limited as follows:
- (a) The Salt Lake County Water Conservancy District and Weber Basin Water Conservancy District each may purchase or lease no more than 50,000 acre-feet a year.
  - (b) The Bear River Water Conservancy District may purchase or lease no more than 60,000 acre-feet a year.
  - (c) The total cumulative amount of developed waters purchased or leased by Cache County and any water conservancy district in Cache County may not exceed 60,000 acre-feet a year.
- (2) An entity or area may purchase or lease water in excess of the limits specified in Subsection (1) on a temporary basis, if water is available from a project and no other entity eligible to receive water has offered to purchase or lease it.

Amended by Chapter 84, 2006 General Session

**73-26-203 Time period for submission of offers to purchase or lease water --  
Oversubscription of water -- Allocation procedure.**

- (1) When a project authorized under this chapter is under development, the division shall establish a period of time during which the entities specified in Section 73-26-201 may offer to purchase or lease water developed by the project.
- (2)
- (a) If, in the time period established under Subsection (1), the division receives offers to purchase or lease more water than can be made available through the project, the board shall allocate the water among the interested purchasers.
  - (b) In determining the allocations, the board:
    - (i) shall give priority in the following order to:
      - (A) municipal and industrial water needs;
      - (B) agricultural water needs; and
      - (C) all other water uses; and
    - (ii) may proportionately reduce each offer.

Enacted by Chapter 251, 1991 General Session

**Part 3  
Project Development**

**73-26-301 Projects authorized.**

The division may develop the potential projects listed under Subsection 73-26-104(2) and associated works.

Amended by Chapter 84, 2006 General Session

**73-26-302 Construction contingent upon sale or lease of water -- Preconstruction may proceed if funded.**

- (1) Except as provided in Subsection (3), the division may not expend money for construction costs on any phase of a project until:
  - (a) contracts have been made for the sale or lease of at least 70% of the water developed by that phase; and
  - (b) all permits required by the environmental impact statement have been obtained.
- (2) Construction of the project and implementation of the environmental mitigation plan shall proceed concurrently.
- (3) The division may make expenditures for preconstruction costs if money is expressly appropriated or earmarked by statute for that purpose by the Legislature.

Amended by Chapter 342, 2011 General Session

**Part 4**  
**General Provisions**

**73-26-401 Powers of division.**

The division may:

- (1) enter into contracts and agreements for the development, operation, maintenance, repair, and replacement of projects authorized under this chapter; and
- (2)
  - (a) set prices for the sale or lease of water made available by the project, in accordance with Section 73-26-506 and rules made by the board; and
  - (b) enter into contracts for the sale or lease of the water.

Enacted by Chapter 251, 1991 General Session

**73-26-402 Rulemaking power of the board.**

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules to:

- (1) determine water charges as provided in Section 73-26-506;
- (2) administer and operate the reservoirs and associated facilities constructed in accordance with Section 73-26-301;
- (3) establish procedures for reviewing offers to contract for the sale or lease of developed water; and
- (4) set the interest rate for repayment of construction and environmental mitigation costs.

Amended by Chapter 382, 2008 General Session

**73-26-403 Immunity from suit -- Exception.**

Activities engaged in under authority of this chapter are governmental functions. The state and its officers and employees are immune from suit for any injury or damage resulting from those activities, except as provided in Section 63G-7-301.

Amended by Chapter 382, 2008 General Session

**73-26-404 Eminent domain.**

In order to construct the reservoirs and other facilities authorized under this chapter, the division may exercise eminent domain as provided in Title 78B, Chapter 6, Part 5, Eminent Domain.

Amended by Chapter 3, 2008 General Session

**Part 5**  
**Financing and Cost Recovery**

**73-26-502 Analysis of benefits and costs -- Allocation of costs.**

The division shall:

- (1) identify the uses and calculate the economic benefits and costs of the developed water; and
- (2) allocate project costs according to the following purposes:
  - (a) municipal and industrial;
  - (b) agricultural;
  - (c) hydropower;
  - (d) recreation;
  - (e) fish and wildlife; and
  - (f) flood control.

Enacted by Chapter 251, 1991 General Session

**73-26-503 Payment of project costs.**

- (1) Construction and environmental mitigation costs allocated to municipal or industrial uses shall be entirely repaid by the entities contracting for water designated for those uses.
- (2) Twenty-five percent of construction and environmental mitigation costs allocated to agricultural use shall be repaid by entities contracting for agricultural water.
- (3) The full costs of operation, maintenance, repair, and replacement allocated to municipal, industrial, and agricultural uses shall be charged to the entities contracting for water for those uses.
- (4) Project costs allocated to recreation, fish and wildlife, and flood control are not reimbursable and shall be paid entirely by the state.
- (5)
  - (a) The division shall negotiate charges with any person receiving hydropower benefits from a project.
  - (b) The charges shall, at a minimum, be sufficient to pay all project costs allocated to hydropower.
  - (c) Charges in excess of the amount necessary to pay project costs allocated to hydropower shall be deposited in the Water Resources Conservation and Development Fund.

Amended by Chapter 334, 1995 General Session

**73-26-504 Agreement for delivery -- Period for repayment of construction and environmental mitigation costs.**

- (1) The division and the contracting entity shall, by contractual agreement, establish when and in what amount water developed by the project will be delivered to the contracting entity.
- (2) If a contract was made before completion of the project, the contracting entity shall repay the construction and environmental mitigation costs as follows:
  - (a) any developed water taken by the contracting entity during the first 10 years after the project is completed shall be repaid within 50 years from the date the developed water is delivered to the contracting entity; and
  - (b) any developed water taken by the contracting entity after the tenth anniversary date of the project's completion shall be repaid within 50 years from the date the project was completed.
- (3) If a contract was made after the project was completed, the contracting entity shall repay the construction and environmental mitigation costs within a period not to exceed 50 years from the date the contract was made.

Amended by Chapter 102, 1997 General Session

**73-26-505 Interest.**

Interest on the unpaid balance of reimbursable construction and environmental mitigation costs shall be charged at a rate set by the board.

Enacted by Chapter 251, 1991 General Session

**73-26-506 Water charges.**

The division shall set prices for the sale or lease of developed water sufficient to:

- (1) recover the reimbursable construction and environmental mitigation costs within the time period specified in Section 73-26-504 and pay for the interest on those costs;
- (2) pay for operation and maintenance costs; and
- (3) accumulate an adequate reserve for repair and replacement.

Amended by Chapter 102, 1997 General Session

**73-26-507 Repayments returned to Water Resources Conservation and Development Fund -- Deposit of remaining revenue -- Division of Finance authorized to establish accounts.**

- (1) Repayments of construction and environmental mitigation costs, the interest charged, and excess hydropower charges shall be deposited in the Water Resources Conservation and Development Fund.
- (2) The Division of Finance shall establish an enterprise fund, in accordance with Section 51-5-4 and generally accepted accounting principles, for the deposit of revenues designated for operation, maintenance, repair, and replacement.
- (3) The Division of Finance may establish accounts as necessary or desirable to accomplish the purposes of this chapter.

Amended by Chapter 334, 1995 General Session

## **Chapter 27**

### **State Water Development Commission**

#### **73-27-101 River districts.**

For the purposes of this chapter, the river districts of the state are as follows:

- (1) Green River District - Daggett, Duchesne, and Uintah Counties;
- (2) Upper Colorado River District - Carbon, Emery, Grand, and San Juan Counties;
- (3) Lower Colorado River District - Beaver, Eastern Garfield, Iron, Kane, Washington, and Wayne Counties;
- (4) Lower Sevier River District - Millard and Sanpete Counties;
- (5) Upper Sevier River District - Sevier, Piute, and Western Garfield Counties;
- (6) Provo River District - Juab, Utah, and Wasatch Counties;
- (7) Salt Lake District - Salt Lake and Tooele Counties;
- (8) Weber River District - Davis, Morgan, Summit, and Weber Counties; and
- (9) Bear River District - Box Elder, Cache, and Rich Counties.

Enacted by Chapter 124, 2000 General Session

#### **73-27-102 State Water Development Commission created.**

- (1) The State Water Development Commission is created to determine the state's role in the protection, conservation, and development of the state's water resources.
- (2) The commission membership shall include:
  - (a) five members of the Senate, appointed by the president of the Senate, no more than four of whom may be from the same political party;
  - (b) eight members of the House of Representatives, appointed by the speaker of the House of Representatives, no more than six of whom may be from the same political party; and
  - (c) the following nonvoting members, appointed by the governor:
    - (i) a representative of the Office of the Governor;
    - (ii) a representative of the Green River District;
    - (iii) a representative of the Upper Colorado River District;
    - (iv) a representative of the Lower Colorado River District;
    - (v) a representative of the Lower Sevier River District;
    - (vi) a representative of the Upper Sevier River District;
    - (vii) a representative of the Provo River District;
    - (viii) a representative of the Salt Lake District;
    - (ix) a representative of the Weber River District;
    - (x) a representative of the Bear River District;
    - (xi) the executive director of the Department of Natural Resources;
    - (xii) the executive director of the Department of Environmental Quality;
    - (xiii) the commissioner of agriculture and food;
    - (xiv) a member of the Board of Water Resources;
    - (xv) a representative of an organized environmental group; and
    - (xvi) a representative of agricultural production.
- (3)



- (a) Except as required by Subsection (3)(b), the members appointed by the governor under Subsection (2)(c) shall be appointed or reappointed to a four-year term.
- (b) The governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the nonvoting members of the commission are appointed every two years.
- (c) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term.
- (4) The president of the Senate and the speaker of the House of Representatives shall, to the extent possible, appoint members under Subsections (2)(a) and (b) that represent both rural and urban areas of the state.
- (5)
  - (a) The president of the Senate shall designate a member of the Senate appointed under Subsection (2)(a) as a cochair of the commission.
  - (b) The speaker of the House of Representatives shall designate a member of the House of Representatives appointed under Subsection (2)(b) as a cochair of the commission.
- (6) Attendance by at least 50% of one legislative house and more than 50% of the other legislative house constitutes a quorum.
- (7)
  - (a) Compensation and expenses of a member of the commission who is a legislator are governed by Section 36-2-2 and Legislative Joint Rules, Title 5, Legislative Compensation and Expenses.
  - (b) Commission members who are employees of the state shall receive no additional compensation.
  - (c) Other commission members shall receive no compensation or expenses for their service on the commission.
- (8) The Office of Legislative Research and General Counsel shall provide staff support to the commission.

Amended by Chapter 387, 2014 General Session

### **73-27-103 Duties of commission.**

The commission shall consider and make recommendations to the Legislature and governor on the following issues:

- (1) how the water needs of the state's growing municipal and industrial sectors will be met;
- (2) what the impact of federal regulations and legislation will be on the ability of the state to manage and develop its compacted water rights;
- (3) how the state will fund water projects;
- (4) whether the state should become an owner and operator of water projects;
- (5) how the state will encourage the implementation of water conservation programs; and
- (6) other water issues of statewide importance.

Enacted by Chapter 124, 2000 General Session

## **Chapter 28**

### **Lake Powell Pipeline Development Act**

## **Part 1**

### **General Provisions**

#### **73-28-101 Title.**

This chapter is known as the "Lake Powell Pipeline Development Act."

Enacted by Chapter 216, 2006 General Session

#### **73-28-102 Scope.**

Nothing in this chapter may be construed to prevent any person, subject to other provisions of law, from developing the waters of the Colorado River.

Enacted by Chapter 216, 2006 General Session

#### **73-28-103 Definitions.**

As used in this chapter:

- (1) "Board" means the Board of Water Resources.
- (2) "Committee" means the Project Management Committee created in Section 73-28-105.
- (3)
  - (a) "Construction costs" means all costs related to the construction of the project, including the environmental mitigation costs.
  - (b) Construction costs include:
    - (i) acquisition of land and rights-of-way;
    - (ii) board and division expenses related to the project;
    - (iii) compensation for impairment of existing water rights;
    - (iv) construction of the project;
    - (v) design;
    - (vi) engineering;
    - (vii) environmental studies;
    - (viii) legal work;
    - (ix) permitting;
    - (x) planning; and
    - (xi) rebuilding and relocating highways or other facilities affected by the project.
- (4) "Developed water" means surface water developed by the project.
- (5) "District" means:
  - (a) the Central Iron County Water Conservancy District;
  - (b) the Kane County Water Conservancy District;
  - (c) the Washington County Water Conservancy District; or
  - (d) any combination of those districts listed in Subsections (5)(a) through (c).
- (6) "Division" means the Division of Water Resources.
- (7) "Environmental mitigation costs" means costs associated with obtaining permits required by federal, state, or local governmental agencies.
- (8) "Preconstruction costs" means any of the following costs incurred before project construction begins:
  - (a) planning;
  - (b) design;
  - (c) engineering studies;

- (d) legal work;
  - (e) permitting;
  - (f) acquisition of land and rights-of-way;
  - (g) compensation for impairment of existing water rights;
  - (h) environmental studies; or
  - (i) any combination of Subsections (8)(a) through (h).
- (9)
- (a) "Project" means the Lake Powell Pipeline project and associated facilities, including:
    - (i) facilities associated with environmental mitigation;
    - (ii) hydroelectric generating works and incidental electrical facilities;
    - (iii) pipelines; and
    - (iv) pumping stations.
  - (b) Notwithstanding Subsection (9)(a), associated facilities do not include the local facilities necessary for the treatment and local delivery of the developed water.
- (10) "Project costs" include preconstruction costs, construction costs, and project operation, maintenance, repair, and replacement costs.

Enacted by Chapter 216, 2006 General Session

**73-28-104 Powers of the board.**

- (1) The board may contract with:
- (a) a district for the sale of developed water;
  - (b) a qualified entity for the development or construction of the project; or
  - (c) a district or other qualified entity for the operation, maintenance, repair, or replacement of the project.
- (2) By following the procedures and requirements of Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board may make rules to:
- (a) establish prices, in consultation with the committee and in accordance with Section 73-28-403, for:
    - (i) developed water sold to the districts; and
    - (ii) electricity made available by the project;
  - (b) establish procedures for reviewing offers to contract for the sale of developed water and electricity;
  - (c) establish the interest rate for repayment of preconstruction and construction costs;
  - (d) establish a reasonable time period for the districts to offer to purchase water; and
  - (e) administer and operate the project.
- (3) The board may exercise eminent domain, as provided in Title 78B, Chapter 6, Part 5, Eminent Domain, to construct the project.

Amended by Chapter 3, 2008 General Session

Amended by Chapter 382, 2008 General Session

**73-28-105 Project Management Committee created.**

- (1) There is created a Project Management Committee within the division.
- (2)
- (a) The committee shall be comprised of one representative appointed by:
    - (i) the division director;
    - (ii) the board; and

- (iii) each of the participating districts.
- (b) The division representative is the chair of the committee.
- (3)
  - (a) The members shall serve a four-year term.
  - (b) When a vacancy occurs in the membership for any reason, the replacement shall be appointed for the unexpired term in the same manner as the vacated member was appointed.
- (4)
  - (a) A majority of the members of the committee constitute a quorum of the committee.
  - (b) The action of a majority of a quorum constitutes the action of the committee.
- (5) The committee shall:
  - (a) consult with the board on a regular basis concerning:
    - (i) the development and construction of the project;
    - (ii) the operation, maintenance, repair, and replacement of the project; and
    - (iii) the prices of developed water and electricity; and
  - (b) approve all expenditures from the fund created in Section 73-28-404.

Enacted by Chapter 216, 2006 General Session

## **Part 2**

### **Board of Water Resources to Construct the Lake Powell Pipeline**

#### **73-28-201 Lake Powell Pipeline project.**

- (1) The board shall:
  - (a) construct the project as funded by the Legislature;
  - (b) own, operate, and maintain the project until the title is transferred under Section 73-28-405; and
  - (c) consult with the committee on a regular basis concerning the development, construction, operation, maintenance, repair, and replacement of the project.
- (2)
  - (a) The board may contract with the state of Arizona to participate in the project to develop its water rights.
  - (b) The board shall ensure that the contract requires the state of Arizona to pay for all project costs represented by its share of the project.

Enacted by Chapter 216, 2006 General Session

#### **73-28-202 Construction contingent upon sale of water.**

- (1) Except as provided in Subsection (3), the board may not expend money for construction costs for any phase of the project until:
  - (a) the board has contracted with the districts for the sale of at least 70% of the water developed by that phase of the project; and
  - (b) all permits required by the environmental impact statement have been obtained.
- (2) Construction of the project and implementation of any environmental mitigation requirements may proceed concurrently.
- (3) The board may make expenditures for preconstruction costs if money is expressly appropriated or earmarked by statute for that purpose by the Legislature.

Amended by Chapter 342, 2011 General Session

**73-28-203 Development of hydroelectric generating works -- Electricity offered to public utilities or municipalities.**

- (1) The board may construct and own hydroelectric generating works and incidental electrical facilities in association with the project.
- (2)
  - (a) Except for electricity needed for project operations, the board shall first offer to sell electricity derived from any hydroelectric generating works owned by it to public utilities or municipalities providing electricity to consumers in Utah.
  - (b) The board, in consultation with the committee and in accordance with Section 73-28-403, shall establish the prices at which the electricity is sold.
- (3) In accordance with Section 51-4-1, the board shall deposit:
  - (a) revenues received from the sale of electricity designated for the repayment of preconstruction and construction costs and interest into the Water Resources Conservation and Development Fund;
  - (b) revenues received from the sale of electricity designated for project operation, maintenance, repair, and replacement costs into the Lake Powell Pipeline Project Operation and Maintenance Fund; and
  - (c) any additional revenues received from the sale of electricity into the Water Resources Conservation and Development Fund.

Enacted by Chapter 216, 2006 General Session

**Part 3**  
**Allocation of Developed Water**

**73-28-301 Entities eligible to receive developed water.**

- (1) Except for developed water reserved for wildlife or public recreation, the board shall make the developed water available by contract exclusively to the districts listed in Subsection 73-28-103(5).
- (2) A district that purchases developed water may:
  - (a) use the water directly;
  - (b) exchange the water by following the procedures and requirements of Section 73-3-20; or
  - (c) sell the water to any entity or person.
- (3) Districts purchasing developed water shall build any facilities necessary for the treatment and local delivery of the developed water.

Enacted by Chapter 216, 2006 General Session

**73-28-302 Limits on amount of water available to any district -- Exception.**

- (1) Except as provided in Subsection (2), the total amount of developed water that the board may make available to any district is limited as follows:
  - (a) The Kane Water Conservancy District may purchase no more than 10,000 acre-feet of developed water per calendar year.

- (b) The Washington County Water Conservancy District may purchase no more than 69,000 acre-feet of developed water per calendar year.
  - (c) The Central Iron County Water Conservancy District may purchase no more than the amount of Colorado River water it acquires.
- (2)
- (a) A district may purchase developed water in excess of the limits specified in Subsection (1) for that calendar year if:
    - (i) developed water is available; and
    - (ii) no other district eligible to receive the developed water has offered to purchase it.
  - (b) The board may expand the size of the project and exceed the limits in Subsection (1) if the board or a district acquires additional water rights.
- (3) Before beginning the final design of the project, the board shall make rules establishing a reasonable time during which the districts may offer to purchase developed water.
- (4) If the Central Iron County Water Conservancy District acquires water rights and participates in the project, the board shall ensure that:
- (a) the project is sized and constructed to transport the Central Iron County Water Conservancy District's water from Lake Powell; and
  - (b) facilities from Washington County to Cedar City are included in the project.

Enacted by Chapter 216, 2006 General Session

## **Part 4**

### **Financing and Cost Recovery**

#### **73-28-401 Analysis of benefits and costs -- Allocation of costs.**

- (1) The board shall allocate project costs based on the economic costs and benefits of the developed water and electricity among the following water uses:
  - (a) municipal and industrial;
  - (b) electricity;
  - (c) public recreation; and
  - (d) fish and wildlife.
- (2) The state shall pay the nonreimbursable project costs allocated to recreation and fish and wildlife.

Enacted by Chapter 216, 2006 General Session

#### **73-28-402 Agreement for delivery -- Period for repayment of costs.**

- (1) The board and each district shall establish by contract the timing and amount of developed water to be delivered to the district.
- (2) If a contract was made before the project's completion, the district shall repay the preconstruction and construction costs within 50 years from the date of:
  - (a) the delivery of developed water to the district during the first 10 years after the project is completed; or
  - (b) the project's completion for any developed water delivered to the district after the tenth anniversary date of the project's completion.

- (3) If a contract was made after the project's completion date, the district shall repay the preconstruction and construction costs within a period not to exceed 50 years from the date that the contract was made.
- (4) The board shall establish and charge a reasonable interest rate for the unpaid balance of reimbursable preconstruction and construction costs.

Enacted by Chapter 216, 2006 General Session

**73-28-403 Water and electricity charges.**

The board, in consultation with the committee, shall establish prices for the developed water sold to the districts and electricity sufficient to:

- (1) recover the reimbursable preconstruction costs, construction costs, and interest on those costs within the time period specified in Section 73-28-402;
- (2) pay for operation and maintenance costs;
- (3) accumulate an adequate reserve for repair and replacement; and
- (4) allocate the proportionate cost of the project facilities required to deliver the developed water to each district.

Enacted by Chapter 216, 2006 General Session

**73-28-404 Repayments returned to Water Resources Conservation and Development Fund -- Establishment of an enterprise fund.**

- (1) The board shall deposit, in accordance with Section 51-4-1, into the Water Resources Conservation and Development Fund:
  - (a) repayments of preconstruction and construction costs; and
  - (b) the interest charged.
- (2)
  - (a) There is created an enterprise fund, as defined in Subsection 51-5-4(8), entitled the "Lake Powell Pipeline Project Operation and Maintenance Fund."
  - (b) The fund consists of:
    - (i) revenues received from the sale of developed water that is designated for project operation, maintenance, repair, and replacement costs;
    - (ii) revenues received from the sale of electricity that are deposited in the fund in accordance with Subsection 73-28-203(3); and
    - (iii) all interest earned by the fund.
- (3) Notwithstanding Section 63J-1-211, the Legislature may not appropriate any money from the Lake Powell Pipeline Project Operation and Maintenance Fund.
- (4) The state treasurer shall:
  - (a) invest the money in the enterprise fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act; and
  - (b) deposit all interest or other earnings derived from those investments into the Lake Powell Pipeline Operation and Maintenance Fund.
- (5) The committee shall approve the expenditure of fund money to cover the project operation, maintenance, repair, and replacement costs, subject to:
  - (a) money available in the fund; and
  - (b) rules established by the board under Subsection 73-28-104(2).
- (6) If title to the project is transferred under Section 73-28-405, the agreement shall direct the disposition of the money remaining in the fund.

Amended by Chapter 303, 2011 General Session  
Amended by Chapter 342, 2011 General Session

**73-28-405 Transfer of title to project and water rights to districts.**

- (1) The board shall convey the project's title and its associated water rights to the districts if:
  - (a) the state has been fully compensated for all of its reimbursable costs;
  - (b) the board finds that the conveyance of the project's title would be in the best interest of the state, the districts, and those receiving developed water; and
  - (c) the districts enter into an agreement with each other and the board that would ensure the continued operation, maintenance, repair, and replacement of the project.
- (2) The board shall convey the project's title and its associated water rights to the districts in proportion to the amount each district paid for the developed water it received.

Enacted by Chapter 216, 2006 General Session

**Chapter 29**  
**Public Waters Access Act**

**Part 1**  
**General Provisions**

**73-29-101 Title.**

This chapter is known as the "Public Waters Access Act."

Enacted by Chapter 410, 2010 General Session

**73-29-102 Definitions.**

As used in this chapter:

- (1) "Division" means the Division of Wildlife Resources.
- (2) "Floating access" means the right to access public water flowing over private property for floating and fishing while floating upon the water.
- (3) "Impounded wetlands" means a wetland or wetland pond that is formed or the level of which is controlled by a dike, berm, or headgate that retains or manages the flow or depth of water, including connecting channels.
- (4) "Navigable water" means a water course that in its natural state without the aid of artificial means is useful for commerce and has a useful capacity as a public highway of transportation.
- (5) "Private property to which access is restricted" means privately owned real property:
  - (a) that is cultivated land, as defined in Section 23-20-14;
  - (b) that is:
    - (i) properly posted, as defined in Section 23-20-14;
    - (ii) posted as described in Subsection 76-6-206(2)(b)(iii); or
    - (iii) posted as described in Subsection 76-6-206.3(2)(c);
  - (c) that is fenced or enclosed as described in:
    - (i) Subsection 76-6-206(2)(b)(ii); or



- (ii) Subsection 76-6-206.3(2)(b); or
- (d) that the owner or a person authorized to act on the owner's behalf has requested a person to leave as provided by:
  - (i) Section 23-20-14;
  - (ii) Subsection 76-6-206(2)(b)(i); or
  - (iii) Subsection 76-6-206.3(2)(a).
- (6) "Public access area" means the limited part of privately owned property that:
  - (a) lies beneath or within three feet of a public water or that is the most direct, least invasive, and closest means of portage around an obstruction in a public water; and
  - (b) is open to public recreational access under Section 73-29-203; and
  - (c) can be accessed from an adjoining public access area or public right-of-way.
- (7) "Public recreational access" means the right to engage in recreational access established in accordance with Section 73-29-203.
- (8)
  - (a) "Public water" means water:
    - (i) described in Section 73-1-1; and
    - (ii) flowing or collecting on the surface:
      - (A) within a natural or realigned channel; or
      - (B) in a natural lake, pond, or reservoir on a natural or realigned channel.
  - (b) "Public water" does not include water flowing or collecting:
    - (i) on impounded wetland;
    - (ii) on a migratory bird production area, as defined in Section 23-28-102;
    - (iii) on private property in a manmade:
      - (A) irrigation canal;
      - (B) irrigation ditch; or
      - (C) impoundment or reservoir constructed outside of a natural or realigned channel; or
    - (iv) on a jurisdictional wetland described in 33 C.F.R. 328.3.
- (9)
  - (a) "Recreational access" means to use a public water and to touch a public access area incidental to the use of the public water for:
    - (i) floating;
    - (ii) fishing; or
    - (iii) waterfowl hunting conducted:
      - (A) in compliance with applicable law or rule, including Sections 23-20-8, 73-29-203, and 76-10-508; and
      - (B) so that the individual who engages in the waterfowl hunting shoots a firearm only while within a public access area and no closer than 600 feet of any dwelling.
  - (b) "Recreational access" does not include:
    - (i) hunting, except as provided in Subsection (9)(a)(iii);
    - (ii) wading without engaging in activity described in Subsection (9)(a); or
    - (iii) any other activity.

Enacted by Chapter 410, 2010 General Session

### **73-29-103 Declarations.**

The Legislature declares:

- (1) the Utah Constitution's specific private property protections, including recognition of the inalienable right to acquire, possess, and protect property and the prohibition on taking

- or damaging private property for public use without just compensation, protect against government's broad recognition or grant of a public recreation easement to access or use public water on private property;
- (2) general constitutional and statutory provisions declaring public ownership of water and recognizing existing rights of use are insufficient to overcome the specific constitutional protections for private property and do not justify inviting widespread unauthorized invasion of private property for recreation purposes where public access has never existed or has not existed for a sufficient period and under the conditions required to support recognition under this chapter;
  - (3) whether, or to what extent, a public easement exists for recreational use of public waters on private property is uncertain after judicial decisions in the cases of *J.J.N.P. Co. v. State*, 655 P.2d 1133 (Utah 1982) and *Conatser v. Johnson*, 194 P.3d 897 (Utah 2008), which decisions did not address the constitutional prohibition on taking or damaging private property without just compensation;
  - (4) legislative failure to provide guidance before, coupled with legislative inaction after the 1982 decision in *J.J.N.P. Co. v. State* form a compelling foundation for the Legislature to affirm a limited right to float on the water without violating the constitutional protections of the underlying private property;
  - (5) the real and substantial invasion of private property rights did not occur with recognition of the right to float on water that passes over the land, but with the right, first recognized in *Conatser v. Johnson*, to physically occupy the land for an indeterminate time and for a wide range of activities by the public against the owner's will and without just compensation;
  - (6) its intent to foster restoration of the accommodation existing between recreational users and private property owners before the decision in *Conatser v. Johnson*, affirm a floating right recognized by the court in *J.J.N.P. Co. v. State*, and recognize adverse use as a constitutionally sound and manageable basis for establishing a limited right of public recreational access on private property in accordance with this chapter.

Enacted by Chapter 410, 2010 General Session

## **Part 2**

### **Recreational Access to Public Water**

#### **73-29-201 General access provisions.**

- (1) The public may use a public water for recreational activity if:
  - (a) the public water:
    - (i) is a navigable water; or
    - (ii) is on public property; and
  - (b) the recreational activity is not otherwise prohibited by law.
- (2) A person may access and use a public water on private property for any lawful purpose with the private property owner's permission.
- (3) A person may not access or use a public water on private property for recreational purposes if the private property is property to which access is restricted, unless public recreational access is established under Section 73-29-203.

Enacted by Chapter 410, 2010 General Session

**73-29-202 Public right to float on public waters.**

- (1) There is a public right to float on public water that has sufficient width, depth, and flow to allow free passage of the chosen vessel at the time of floating.
- (2) Subsection (1) includes the right to:
  - (a) incidentally touch private property as required for safe passage and continued movement;
  - (b) portage around a dangerous obstruction in the water, if portage is made in a manner that is:
    - (i) most direct;
    - (ii) least invasive; and
    - (iii) closest to the water; and
  - (c) fish while floating.
- (3) A person exercising the right that this section recognizes:
  - (a) shall enter and exit the water at a point on public property or private property with permission of the owner; and
  - (b) may not stop on private property.
- (4)
  - (a) The right this section recognizes does not prevent the establishment of broader public recreational access in accordance with this chapter.
  - (b) Notwithstanding Subsection (4)(a), the right this section recognizes does not establish broader public recreational access.

Amended by Chapter 340, 2011 General Session

**73-29-203 Establishment of public recreational access.**

- (1) Public recreational access is established if:
  - (a) the private property has been used by the public for recreational access requiring the use of the public water for a period of at least 10 consecutive years that begins after September 22, 1982; and
  - (b) the public use has been:
    - (i) continuous during the season conducive to the recreational access;
    - (ii) open and notorious;
    - (iii) adverse; and
    - (iv) without interruption.
- (2) The permissive use of a public water on private property granted by the owner is not an adverse use.
- (3)
  - (a) A property owner's overt act intended to interrupt uninvited recreational access is a sufficient interruption to restart any period of use that may have already begun under Subsection (1) if the evidence, taken as a whole, shows that the act came to the attention of the public or resulted in actual interruption.
  - (b) If an overt act is established in a final judgment to have interrupted recreational access, no other person may challenge the existence of the overt act in a subsequent action.
- (4) The extent and nature of the public recreational access permitted under Subsection (1) is determined by the nature of the historical recreational access during the 10 consecutive years required under Subsection (1).
- (5) When a public water is a lake, pond, or reservoir located on a natural stream and on private property, any portion that has been developed or protected for private hunting is not subject

to public recreational access even though the remainder of the public water qualifies for public recreational access under this section.

- (6) A right of public recreational access on private property, established in accordance with this section, may not be closed without authorization of other law.

Enacted by Chapter 410, 2010 General Session

**73-29-204 Quiet title action.**

- (1)
- (a) A person, including the division, may file a quiet title action in accordance with Title 78B, Chapter 6, Part 13, Quiet Title, to obtain a judicial declaration of the existence of a right to public recreational access under Section 73-29-203.
  - (b) The division may intervene in a quiet title action filed in accordance with Subsection (1).
  - (c) The division may not be compelled to:
    - (i) file a quiet title action; or
    - (ii) join a quiet title action filed by another person.
- (2) The claimant in a quiet title action under Subsection (1) shall:
- (a) name the property owner of record as a party; and
  - (b) notify the division of the suit by certified mail no later than 20 days after the day on which the quiet title action is filed.
- (3) Within five days after receiving notice in accordance with Subsection (2)(b), the division shall post notice of a quiet title action under this section on its Internet website.
- (4) A quiet title action under this section shall be commenced within four years after the day on which a period of prescriptive use ceases.
- (5) The burden of proof for a quiet title action under this section is on the claimant to prove the existence of a right to public recreational access or floating access under Section 73-29-203 by clear and convincing evidence.
- (6) A quiet title action under this section is limited to a declaration concerning the property and property owner joined in the action.
- (7)
- (a) Multiple claimants and multiple property owners may be included in a quiet title action concerning public water common to the property owners.
  - (b) In a case with multiple property owners, the court shall make a separate finding concerning each property owner included in the action.
- (8) A final judgment on the merits that a piece of private property is not subject to public recreational access:
- (a) is binding; and
  - (b) may not be challenged in subsequent litigation.
- (9) The court may award attorney fees and costs in an action under this section if the court finds that the losing party's arguments lack a reasonable basis in law or fact.

Enacted by Chapter 410, 2010 General Session

**73-29-205 Injunctive relief.**

- (1) The owner of private property may obtain injunctive relief against a person who, without permission, enters, remains, or persists in an effort to enter or remain on the owner's property for recreational use of public water other than use in accordance with Sections 73-29-202 and 73-29-203, when effective.

- (2) An injunction under this section is in addition to any remedy for trespass.
- (3) The existence of an easement under Section 73-29-203 is a defense in an action for injunctive relief under this section or a claim of trespass under other law.
- (4) If a person against whom an injunction is sought, or a person charged with trespass, establishes by clear and convincing evidence the existence of an easement for defense purposes, as described in Subsection (3), the establishment of the existence of the easement applies only to the defense and does not constitute a judicial declaration of the easement's existence for another purpose.
- (5) If an owner obtains an injunction against a person under this section, the injunction does not serve as a declaration that there is no public easement on the owner's property.
- (6) The court may award attorney fees and costs in an action under this section if the court finds that the losing party's arguments lack a reasonable basis in law or fact.

Enacted by Chapter 410, 2010 General Session

**73-29-206 Effect of chapter on other uses and restrictions -- Required acts.**

- (1) Nothing in this chapter affects the right of the public to use public water for public recreational access, including the touching of the bed beneath the public water if:
  - (a) the bed beneath the public water is public property; or
  - (b) the bed beneath the public water is private property to which access is not restricted.
- (2) A person using a public water for public recreational access is subject to any other restriction lawfully placed on the use of the public water by a governmental entity with authority to restrict the use of the public water.
- (3) Nothing in this chapter limits or enlarges any right granted by express easement.
- (4) When leaving a public access area, a person shall remove any refuse or tangible personal property the person brought into the public access area.

Enacted by Chapter 410, 2010 General Session

**73-29-207 Fences across public water.**

- (1) The owner of a public access area adjacent to and lying beneath a public water may place a fence or obstruction across a public water for agricultural, livestock, or other lawful purposes.
- (2) A fence or other obstruction shall:
  - (a) comply with an applicable federal, state, or local law; and
  - (b) be constructed in a manner that does not create an unreasonably dangerous condition to the public lawfully using the public water.
- (3) The owner of a public access area shall allow the placement of a ladder, gate, or other facility allowing portage around a fence or obstruction if:
  - (a) the owner places a fence or obstruction across a public water in accordance with Subsection (1); and
  - (b) the water is open to public recreational access by permission or under Section 73-29-203.

Enacted by Chapter 410, 2010 General Session

**73-29-208 Severability.**

If any of this chapter's provisions, or the application of any of this chapter's provisions, is held to be unconstitutional, the provision is severable and this chapter's other provisions and applications remain effective.

Enacted by Chapter 410, 2010 General Session

## **Chapter 30 Great Salt Lake Advisory Council Act**

### **Part 1 General Provisions**

#### **73-30-101 Title.**

This chapter is known as the "Great Salt Lake Advisory Council Act."

Enacted by Chapter 141, 2010 General Session

#### **73-30-102 Definition.**

As used in this chapter, "council" means the Great Salt Lake Advisory Council created in Section 73-30-201.

Enacted by Chapter 141, 2010 General Session

### **Part 2 Advisory Council Organization and Duties**

#### **73-30-201 Advisory council created -- Staffing -- Per diem and travel expenses.**

- (1) There is created an advisory council known as the "Great Salt Lake Advisory Council" consisting of 11 members listed in Subsection (2).
- (2)
  - (a) The governor shall appoint the following members, with the consent of the Senate:
    - (i) one representative of industry representing the extractive industry;
    - (ii) one representative of industry representing aquaculture;
    - (iii) one representative of conservation interests;
    - (iv) one representative of a migratory bird protection area as defined in Section 23-28-102;
    - (v) one representative who is an elected official from municipal government, or the elected official's designee;
    - (vi) five representatives who are elected officials from county government, or the elected official's designee, one each representing:
      - (A) Box Elder County;
      - (B) Davis County;
      - (C) Salt Lake County;
      - (D) Tooele County; and
      - (E) Weber County; and
    - (vii) one representative of a publicly owned treatment works.
- (3)
  - (a) Except as required by Subsection (3)(b), each member shall serve a four-year term.

- (b) Notwithstanding Subsection (3)(a), at the time of appointment or reappointment, the governor shall adjust the length of terms of voting members to ensure that the terms of council members are staggered so that approximately half of the council is appointed every two years.
- (c) When a vacancy occurs in the membership for any reason, the governor shall appoint a replacement for the unexpired term with the consent of the Senate.
- (d) A member shall hold office until the member's successor is appointed and qualified.
- (4) The council shall determine:
  - (a) the time and place of meetings; and
  - (b) any other procedural matter not specified in this chapter.
- (5)
  - (a) Attendance of six members at a meeting of the council constitutes a quorum.
  - (b) A vote of the majority of the members present at a meeting when a quorum is present constitutes an action of the council.
- (6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
  - (a) Section 63A-3-106;
  - (b) Section 63A-3-107; and
  - (c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (7) The Department of Natural Resources and the Department of Environmental Quality shall coordinate and provide necessary staff assistance to the council.

Amended by Chapter 308, 2011 General Session

**73-30-202 Duties of the council.**

- (1)
  - (a) The council shall advise the persons listed in Subsection (1)(b) on the sustainable use, protection, and development of the Great Salt Lake in terms of balancing:
    - (i) sustainable use;
    - (ii) environmental health; and
    - (iii) reasonable access for existing and future development.
  - (b) The council shall advise, as provided in Subsection (1)(a):
    - (i) the governor;
    - (ii) the Department of Natural Resources; and
    - (iii) the Department of Environmental Quality.
- (2) The council shall assist the Division of Forestry, Fire, and State Lands in its responsibilities for the Great Salt Lake described in Section 65A-10-8.
- (3) The council:
  - (a) may recommend appointments to the Great Salt Lake technical team created by the Division of Forestry, Fire, and State Lands; and
  - (b) shall receive and utilize technical support from the Great Salt Lake technical team.
- (4) The council shall assist the Department of Natural Resources, the Department of Environmental Quality, and their applicable boards in accomplishing their responsibilities for the Great Salt Lake.
- (5) The council shall report annually to the Natural Resources, Agriculture, and Environmental Quality Appropriations Subcommittee on the council's activities.

Amended by Chapter 242, 2012 General Session

